

(27,092)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

No. 1006.

ALBERT S. BURLESON, POSTMASTER GENERAL,
APPELLANT,

vs.

THOMAS E. DEMPCY, WALTER A. SHAW, PATRICK J.
LUCEY, JAMES H. WILKERSON, AND FRANK H. FUNK,
CONSTITUTING THE PUBLIC UTILITIES COMMISSION
OF ILLINOIS, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS.

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- 1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable Kenesaw M. Landis, District Judge of the United States for the Northern District of Illinois, on the 26th day of April, in the year of our Lord one thousand nine hundred and 19, being one of the days of the regular April Term of said Court, begun Monday, the seventh day of April and of our Independence the 143d year.

President: Honorable Kenesaw M. Landis, District Judge; John J. Bradley, U. S. Marshal; Thomas C. MacMillan, Clerk.

- 2 In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 1209.

ALBERT S. BURLESON, Postmaster General, Plaintiff,

VS.

THOMAS E. DEMPCY, WALTER A. SHAW, PATRICK J. LUCEY, JAMES H. Wilkerson, and Frank H. Funk, Constituting the Members of the Public Utilities Commission of Illinois; the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, Defendants.

Be it remembered that heretofore, to wit: on the 7th day of April, 1919, came the above named complainant, by his solicitors, and filed his bill of complaint, as follows:

- 3 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity.

ALBERT S. BURLESON, Postmaster General,

VS.

THOMAS E. DEMPCY et al.

Albert S. Burleson, Postmaster General of the United States.
Henry S. Robbins, One of his Solicitors.
Henry S. Robbins, Counsel.

4 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity.

ALBERT S. BURLESON, Postmaster General,

VS.

THOMAS E. DEMPCY et al.

To the Honorable Judges of said Court:

Albert S. Burleson, Postmaster General of the United States, a citizen of the State of Texas, and having an official residence in the City of Washington, District of Columbia, as a direct and immediately responsible representative of the President of the United States and not by virtue of the power vested in and the duties imposed upon the Postmaster General by virtue of his said office, brings this bill of complaint against Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson, and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, all of said defendants being citizens of the State of Illinois and residents within said state, and further represents as follows:

5 1. On April 2, 1917, the Congress of the United States adopted a joint resolution which was approved by the President of the United States April 6, 1917, declaring that a state of war existed between the United States and the Imperial German Government and "that the President be and he is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial German Government; and to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States."

2. That the Congress of the United States on July 16, 1918, adopted a joint resolution in the words and figures following:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the President during the continuance of the present war is authorized and empowered whenever he shall deem it necessary for the national security or defense, to supervise or to take possession and assume control of any telegraph, telephone, marine cable, or radio system or systems, or any part thereof, and to operate the same in such manner as may be needful or desirable for the duration of the war, which supervision, possession, control, or operation shall not extend beyond the date of the proclamation by the President of the exchange of ratifications of the treaty of peace: Provided, that just compensation shall be made for such supervision, possession, control, or operation, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the

6 same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code: Provided further, that nothing in this Act shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by such system or systems."

3. That on the 22nd day of July A. D. 1918, the President of the United States under the authority vested in him by the aforesaid joint resolution and under and by virtue of all other powers thereto him enabling issued the following proclamation:

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas the Congress of the United States, in the exercise of the constitutional authority vested in them, by joint resolution of the Senate and House of Representatives, bearing date July 16, 1918, resolved:

That the President, during the continuance of the present war, is authorized and empowered, whenever he shall deem it necessary for the national security or defense, to supervise or to take possession and assume control of any telegraph, telephone, marine cable, or radio system or systems, or any part thereof, and to operate the same
7 in such manner as may be needful or desirable for the duration of the war, which supervision, possession, control, or operation shall not extend beyond the date of the proclamation by the President of the exchange of ratifications of the treaty of peace: Provided, that just compensation shall be made for such supervision, possession, control, or operation, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid 75 per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum, as added to said 75 per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section 24, paragraph 20, and section 145 of the Judicial Code: Provided further, that nothing in this act shall be construed to amend, repeal, impair or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications or the issue of stocks and bonds by such system or systems.

And whereas it is deemed necessary for the national security and defense to supervise and to take possession and assume control of all telegraph and telephone systems and to operate the same in such manner as may be needful or desirable;

Now, therefore, I, Woodrow Wilson, President of the United States, under and by virtue of the powers vested in me by the foregoing resolution, and by virtue of all other powers thereto me enabling, do hereby take possession and assume control and supervision of each and every telegraph and telephone system, and every part thereof, within the jurisdiction of the United States, including all equipment thereof and appurtenances thereto whatsoever and all materials and supplies.

It is hereby directed that the supervision, possession, control, and operation of such telegraph and telephone systems hereby by me undertaken shall be exercised by and through the Postmaster General, Albert S. Burleson. Said Postmaster General may perform the duties hereby and hereunder imposed upon him, so long and to such extent and in such manner as he shall determine, through the owners, managers, boards of directors, receivers, officers, and employees of said telegraph and telephone systems.

Until and except so far as said Postmaster General shall from time to time by general or special orders otherwise provide, the owners, managers, boards of directors, receivers, officers and employees of the various telegraph and telephone systems shall continue the operation thereof in the usual and ordinary course of the business of said systems, in the names of their respective companies, associations, organizations, owners, or managers, as the case may be.

Regular dividends hitherto declared, and maturing interest upon bonds, debentures, and other obligations may be paid in due course; and such regular dividends and interest may continue to be paid until and unless the said Postmaster General, shall from time to time, otherwise by general or special orders determine, and, subject to the approval of said Postmaster General, the various telegraph and telephone systems may determine upon and arrange for the renewal and extension of maturing obligations.

By subsequent order of said Postmaster General supervision, possession, control, or operation, may be relinquished in whole or in part to the owners thereof of any telegraph or telephone system or any part thereof supervision, possession, control, or operation of which is hereby assumed or which may be subsequently assumed in whole or in part hereunder.

From and after 12 o'clock midnight on the 31st day of July, 1918, all telegraph and telephone systems included in this order and proclamation shall conclusively be deemed within the possession and control and under the supervision of said Postmaster General without further act or notice.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done by the President, in the District of Columbia, this 22d day of July, in the year of our Lord 1918, and of the independence of the United States the 143d.

[SEAL.]

WOODROW WILSON.

By the President:

FRANK L. POLK,

Acting Secretary of State.

4. That when the Congress adopted said resolution of July 16, 1918, it did not, by appropriation from the funds of the United States or otherwise, provide plaintiff with any money or credit with which to operate said telegraph and telephone systems, and has not since done so.

10 5. That pursuant to said proclamation the President did, at twelve o'clock midnight on the 31st day of July, 1918, take possession and assume control and supervision of all the telegraph and telephone systems in the United States, and every part thereof, including all equipment thereof and appurtenances thereto whatsoever, and all material and supplies, and did thenceforth and to the present time has exercised supervision, possession, control and operation of said telegraph and telephone systems by and through plaintiff, the Postmaster General of the United States, and that on the 1st day of August, 1918, the said Postmaster General issued the following order:

"Office of the Postmaster General,

WASHINGTON, August 1, 1918.

Order No. 1783:

Pursuant to the proclamation of the President of the United States, I have assumed possession, control and supervision of the telegraph and telephone systems of the United States. This proclamation has already been published, and the officers, operators and employees of the various telegraph and telephone companies are acquainted with its terms.

Until further notice the telegraph and telephone companies shall continue operation in the ordinary course of business through regular channels. Regular dividends heretofore declared, and maturing interest on bonds, debentures and other obligations may be paid in due course, and the companies may renew or extend their maturing obligations, unless otherwise ordered by the Postmaster General. All officers, operators and employees of the telegraph and telephone companies will continue in the performance of their present duties, reporting to the same officers as heretofore, and on the same terms of employment. Should any officer, operator or employee desire to leave the service, he should give notice as heretofore to the proper officer, so that there may be no interruption or impairment of the service to the public.

I earnestly request the loyal co-operation of all officers, operators and employees and the public, in order that the service rendered shall not only be maintained at a high standard, but improved wherever possible. It is the purpose to co-ordinate and unify these services so that they may be operated as a national system with due regard to the interest of the public and the owners of the properties.

No changes will be made until after the most careful consideration of all the facts. When deemed advisable to make changes, due announcement will be made.

A. S. BURLESON,
Postmaster General."

6. That plaintiff has since said date continued the operation of said various telegraph and telephone systems by using the names of the respective companies, associations and organizations theretofore operating said systems respectively, and by retaining and using as his employees most of the officers and employees previously used by said companies in the operation of their respective systems.

7. That subsequently, in order to facilitate his operation of said telegraph and telephone systems, plaintiff created a Board to take charge of the telegraph and telephone service of the country, by the following orders:

"Telegraph and telephone service, Washington, Dec. 13, 1918.
Order No. 2479.

Union N. Bethell, F. A. Stevenson, G. N. Yorke and A. F. Adams are hereby appointed an operating board for the operation of the telegraph and telephone service under government operation and control, of which board Mr. Bethell will be chairman.

A. S. BURLESON,
Postmaster General."

"Telegraph and Telephone service, Washington, December 23, 1918.

Order No. 2534.

The operating board appointed under Order No. 2479, dated Dec. 13, 1918, consisting of Union N. Bethell, F. A. Stevenson, G. N. Yorke and A. F. Adams, of which Union N. Bethell is chairman, is hereby directed to assume the operation of the telephone and telegraph systems under governmental control.

A. S. BURLESON,
Postmaster General."

8. That on the 29th day of March, 1919, plaintiff found it necessary to and did increase, throughout the United States, the rates to be charged for telegrams and for the use of commercial and government leased wires, and that on said date, to render such increases in rates effective, plaintiff issued generally to his employees throughout the United States, the following order:

"Order Number Twenty-nine-forty.

The following schedule of domestic commercial telegraph rates shall be effective from April first, nineteen-nineteen, and continue until otherwise ordered.

Rates:

Present twenty-five dash two; new thirty dash two point five.

Present thirty dash two; new thirty-six dash two point five;

Present thirty-five dash two; new forty-two dash two point five;

Present forty dash three; new forty-eight dash three point five;

13 Present fifty dash three; new sixty dash three point five;
Present sixty dash four; new seventy-two dash five;

Present seventy-five dash five; New ninety dash six;

Present one hundred dash seven; new one hundred twenty dash eight point five;

Day letters and night letters shall be computed as at present but charged for on the basis of the above rates, night messages will be charged for at an increase of twenty per centum over existing night message rates.

Commercial and government leased wires shall be charged for at an advance of twenty per centum over existing leased wire rates whether such wires be furnished by a telegraph or a telephone system under government control. The telegraph rates for domestic United States Government telegrams are increased twenty per cent. over the present government rate.

The rate increases herein ordered are made necessary to meet the increased cost of operation occasioned by wage increases now in effect made during the past year and are barely sufficient for the purpose.

(Signed)

A. S. BURLESON,

Postmaster General."

and that the foregoing rates are now being charged and collected by plaintiff.

9. That by an act of the Illinois legislature approved June 30, 1913, there was created a State Public Utilities Commission consisting of five members and the five defendants hereinbefore named are the present members of said Commission; that said Commission is by said statute given general supervision of all public utilities, the term "Public Utility" when used in said statute being by it declared

to mean and include every corporation, company, association, joint stock company or association, firm, partnership or individual their lessees, trustees or receivers appointed by any court whatsoever (except, however, such public utilities as are or may hereafter be owned or operated by any municipality) that now or hereafter may own, control, operate or manage within the state directly or indirectly for public use any plant, equipment or property used or to be used for or in connection with the transportation of persons or property or the transmission of telegraph or telephone messages between points within this State; or for the production, storage, transmission, sale, delivery or furnishing of heat, cold, light, power, electricity or water; or for the conveyance of oil or gas by pipe line; or for the storage or warehousing of goods; or for the conduct of the business of a wharfinger; or that may own or control any franchise, license, permit or right to engage in any such business; and said statute also provides that no public utility shall increase any rate or other charge under any circumstances whatsoever except upon showing before the Commission and finding by the Commission that such increase is justified. By said statute said Commission is also authorized and directed, whenever any such public utility shall make a change of rates without said approval of said Commission, to commence an action for the purpose of having such violations or threatened violations stopped or prevented either by mandamus or injunction, and said statute also

provides for fines and imprisonment to be imposed upon any person, acting as agent or employe who violates the provisions of said act.

10. That the plaintiff is informed and believes that on 15 or about the 4th day of April, 1919, said Utilities Commission instructed the Attorney General of Illinois to begin legal proceedings in one of the Illinois courts under said statute against this plaintiff or his employees in Illinois to enjoin and prevent him from continuing in force as to all intrastate service within the State of Illinois said increased rates for telegraph and leased wire service pursuant to plaintiff's order of March 29, 1918, without complying with the provisions of said statute.

11. That said Commission and said Attorney General of Illinois claim that under said State statute and in the exercise of the police power of the State of Illinois delegated to said Commission by said statute, said Commission has the power to regulate the rates to be fixed, charged and collected by plaintiff as to all telegraph and telephone service rendered by plaintiff between points wholly within the State of Illinois—that is as to all such intrastate telegraph and telephone service—and said Commission and Attorney General also claim that under the constitution of the United States it was beyond the power of Congress by said resolution of July 16, 1918, to deprive the said Commission of the right to fix and regulate the charges to be made by plaintiff for such intrastate service, and that said resolution of July 16, 1918, if construed to confer on plaintiff the right to thus prescribe and fix the charges and rates for such intrastate telegraph and telephone service rendered by plaintiff in the State of Illinois, violates the constitution of the United States.

12. That plaintiff contends that said resolution of July 16, 16 1918, confers on him the right to fix the rates and charges for such intrastate telegraph and telephone service within the State of Illinois (and other states) and that, if said Illinois statute creating said Utilities Commission be construed, as claimed by said Commission and said Attorney General, to require plaintiff to comply with said State statute and prescribe only such rates for such intrastate service as said Utilities Commission shall approve, said State statute violates those provisions of the constitution of the United States which confer on Congress and the President of the United States exclusive powers to declare and conduct war, and make all necessary and proper laws for carrying into execution said powers.

13. That the amount involved and the matters in dispute, exclusive of interest and costs, is much more than three thousand dollars.

14. That plaintiff has no adequate remedy at law, nor any other remedy except by injunction issuing out of a court of equity as hereinafter prayed; that if plaintiff shall be prevented from making the charges for telegraphic service prescribed by his said order of March 29, 1919, or be compelled by injunction or otherwise to accept from all persons seeking such service in Illinois, lower rates than those prescribed in said order, plaintiff would permanently lose the difference between such lower rates and such prescribed rates, as it would

not be feasible to bring suits to recover the difference between the prescribed rates and the said lower rates from each person availing himself of such service, as the cost of each of said suits would be in excess of the amount to be recovered, and, furthermore, that
 17 this would result in a multiplicity of suits, and that if the penalties prescribed by said statute for the violation thereof were imposed upon the employees of plaintiff within the State of Illinois, it would result in a demoralization of said employees and the impairment of the service rendered by plaintiff to residents of Illinois.

Wherefore plaintiff prays this honorable court:

1. That Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, who are made defendants hereto, may be required to full and true answer make to this bill, but not under oath (answer under oath being hereby expressly waived), and

2. That a temporary injunction issue herein, and upon a final hearing herein be made permanent, enjoining Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, and each of them, and each of their agents, deputies and employees from interfering, directly or indirectly, by suit or other prosecution, civil or criminal, or in any other manner whatsoever, with plaintiff or any of his agents or employees in charging and collecting for telegraphic service and leased wire service the rates prescribed by plaintiff's said order of March 29, 1919, or any other charges that
 18 may be hereafter prescribed by plaintiff for such service, and that plaintiff may have such other and further relief as may be just and equitable and to the court shall seem meet.

May it please your Honors to grant unto plaintiff a preliminary and permanent injunction as above prayed and also a writ of subpoena of the United States directed to Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, commanding them and each of them on a certain day to appear to answer this bill and to abide by and perform such decree as may be entered by this court.

ALBERT S. BURLESON,

Postmaster General of the United States,

By HENRY S. ROBBINS,

One of His Solicitors.

HENRY S. ROBBINS,

Counsel.

STATE OF ILLINOIS,
Count of Cook, ss:

Henry S. Robbins, being duly sworn, deposes and says that he is one of the solicitors for the plaintiff in the foregoing bill, and has been authorized by the plaintiff to make this affidavit, and that affiant knows the contents thereof, and that the allegations therein stated are true of his own knowledge, except as to those matters therein stated to be upon information and belief, and as to those matters he believes the same to be true.

HENRY S. ROBBINS.

Subscribed and sworn to before me, this 7th day of April, 1919.

A. S. PAPENGUTH,

[NOTARIAL SEAL.]

Notary Public.

[Endorsed:] Filed April 7, 1919. T. C. MacMillan, Clerk.

20 And, to-wit: the 7th day of April, 1919, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to wit:

21 In the District Court of the United States, for the Northern District of Illinois, Northern Division.

In Equity.

ALBERT S. BURLESON, Postmaster General

VS.

THOMAS E. DEMPCY et al.

Order.

Upon filing the bill of complaint herein, and upon motion of plaintiff.

It is ordered that the defendants show cause before this court at 10:30 o'clock A. M., on the 14 day of April, 1919, why a temporary injunction should not issue, as prayed by said bill.

And it is further ordered that until the hearing of said motion, the defendants, Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, and each of them refrain from interfering, directly or indirectly, by suit or other prosecution, civil or criminal, or in any other manner whatsoever, with plaintiff or any of his agents or employees in charging and collecting for telegraphic

22 service and leased wire service the rates prescribed by plaintiff's order of March 29, 1919, or any other charges that may be hereafter prescribed by plaintiff for such service.

KENESAW M. LANDIS, *D. J.*

23 And on to wit: the 7th day of April, 1919, a certain Chancery Subpoena issued out of the Clerk's office of said Court, directed to the Marshal to execute, said Subpoena, together with the Marshal's return thereon endorsed are in words and figures following, to wit:

24 UNITED STATES OF AMERICA,

Northern District of Illinois, Eastern Division, ss:

The President of the United States of America.

To Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, Greeting:

We command you and every of you, that you be and appear before our Judges of our District Court of the United States of America, for the Northern District of Illinois, at Chicago, in the Eastern Division of said District, on or before the twentieth day after service of this writ, exclusive of the day of service, to answer or otherwise defend against a certain bill in equity this day filed by Albert S. Burleson, Postmaster General, in the Clerk's office of said Court, in the City of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Southern District of Illinois to Execute.

Witness the Hon. Kenesaw M. Landis, Judge of the District Court of the United States of America, for the Northern District of Illinois, at Chicago aforesaid, this 7th day of April in the year of our Lord One Thousand Nine Hundred and 19 and of our Independence the 143rd year.

[SEAL.]

T. C. MacMILLAN,

Clerk.

Memorandum.

The defendants are required to file their answer or other defense in the Clerk's office on or before the twentieth day after service hereof upon them, excluding the day of service; otherwise the said bill may be taken pro confesso.

T. C. MacMILLAN,

Clerk.

25 [Endorsed:] No. 1209. Marshal's No. —. District Court of the United States, Northern District of Illinois. Albert S. Burleson, Postmaster General, vs. Thomas E. Dempcy, et al. Chancery Subpoena. Duplicate. Robbins, Townley & Wild, Complainant's Solicitor-.

26

Marshal's Return.

UNITED STATES OF AMERICA,

Southern District of Illinois, Southern Division, ss:

I have duly executed the within writ by reading the same and delivering a true copy thereof to the within named Edward J. Brundage, Attorney, General of the State of Illinois, at Springfield, Sangamon County, Illinois, this 8th day of April, A. D. 1919.

V. Y. DALLMAN,
United States Marshal.

(Endorsed:) Filed April 9, 1919. T. C. MacMillan, Clerk.

27

And on to wit: the 9th day of April, 1919, come- the U. S. Marshal and files in the Clerk's office of said Court a certain certified copy of the order of said Court together with the return of the U. S. Marshal, Southern District of Illinois, which is in words and figures following, to wit:

28

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

MONDAY, April 7, 1919.

Present: Honorable Kenesaw M. Landis, District Judge.

No. 1209.

ALBERT S. BURLESON, Postmaster General,

VS.

THOMAS E. DEMPCY et al.

Order.

Upon filing the bill of complaint herein, and upon motion of plaintiff,

It is ordered that the defendants show cause before this court at 10:30 o'clock A. M., on the 14 day of April, 1919, why a temporary injunction should not issue, as prayed by said bill.

And it further ordered, That until the hearing of said motion, the defendants, Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, and each of them refrain from interfering, directly or indirectly, by suit or other prosecution, civil or criminal, or in any other manner whatsoever, with plaintiff or any of his agents or employees in charging and collecting for telegraphic service and leased wire service the rates prescribed by plaintiff's

order of March 29, 1919, or any other charges that may be hereafter prescribed by plaintiff for such service.

KENESAW M. LANDIS, *D. J.*

29 In the District Court of the United States of America for the Northern District of Illinois, Eastern Division.

I, T. C. MacMillan, Clerk of the District Court of the United States of America for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of an order made and entered in said Court on the 7th day of April A. D. 1919, as fully as the same appears of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 7th day of April A. D. 1919.

T. C. MACMILLAN,
Clerk.

[SEAL.]

30 *Marshal's Return.*

UNITED STATES OF AMERICA,
Southern District of Illinois,
Southern Division, ss:

I have duly executed the within writ by reading the same and delivering a true copy thereof to Frank O. Lowden, Governor of the State of Illinois, and to Edward J. Brundage, Attorney General of the State of Illinois, at Springfield, Sangamon County, Illinois, this 8th day of April, A. D. 1919.

Marshal's fees \$4.12.

V. Y. DALLMAN,
United States Marshal.

(Endorsed:) Filed Apr. 9, 1919, T. C. MacMillan, Clerk.

31 And on to-wit: the 11th day of April, 1919, there was filed in the Clerk's office of said Court a certain Notice and Motion in words and figures following, to-wit:

32 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Notice.

To George T. Buckingham, Esq., Solicitor for Defendant:

Please take notice That on Friday, April 11, 1919, at 10:30 o'clock A. M., I shall call up, before the Honorable Judge Landis, in the

room usually occupied by him as a court room, the motion that two additional judges be called in to hear and determine the application of the motion for a temporary injunction in the above entitled cause, pursuant to Section 266 of the Judicial Code.

HENRY S. ROBBINS,
Solicitor for Plaintiff.

Received copies of the foregoing notice and motion, this 10th day of April, 1919.

GEO. T. BUCKINGHAM,
Solicitor for Defendants.

33 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Motion.

And now comes the Plaintiff and moves the Court to call to his assistance in the hearing and determining the application of the motion for a temporary injunction herein, two other judges, one of whom to be a Circuit Judge, pursuant to Section 266 of the Judicial Code.

HENRY S. ROBBINS,
Solicitor for Plaintiff.

(Endorsed:) Filed April 11, 1919, T. C. MacMillan, Clerk.

34 And on to-wit: the 11th day of April, 1919, there was filed in the Clerk's office of said Court a certain Motion in words and figures following, to-wit:

35 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Motion.

And now comes the Plaintiff and moves the Court to call to his assistance in the hearing and determining the application of the

motion for a temporary injunction herein, two other judges, one of whom to be a Circuit Judge, pursuant to Section 266 of the Judicial Code.

HENRY S. ROBBINS,
Solicitor for Plaintiff.

(Endorsed:) Filed April 11, 1919, T. C. MacMillan, Clerk.

36 And afterwards, to-wit: on the 14th day of April, 1919, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to-wit:

37 In the District Court of the United States, Northern District of Illinois, Eastern Division.

MONDAY, April 14, 1919.

Present: Honorable Kenesaw M. Landis, District Judge.

Equity. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Upon motion of the defendants by their solicitors, it is ordered by the Court that the Western Union Telegraph Company and Postal Telegraph-Cable Company be and the same are hereby made parties defendant in the above-entitled cause, and

It is further ordered that process issue against said Western Union Telegraph Company and Postal Telegraph-Cable Company requiring them to answer the cross-bill as required by the Equity Rules.

38 And afterwards, to-wit: on the 14th day of April, 1919, being one of the days of the regular April term of said Court in the record of proceedings thereof, in said entitled cause, before the Honorable Francis E. Baker, Circuit Judge, Honorable George T. Page, Circuit Judge, Honorable Kenesaw M. Landis, District Judge, appears the following entry, to-wit:

39 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Order.

Before Circuit Judge Baker, Circuit Judge Page, and District Judge Landis.

On motion of plaintiff,

It is ordered that plaintiff have leave to file instanter amendments to paragraph 11 and paragraph 12 of the Bill herein.

40 And on to-wit: the 14th day of April, 1919, come the complainant herein by his attorneys and files in the Clerk's office of said Court his certain Amendment to Bill in words and figures following, towit:

41 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Now comes the plaintiff, and pursuant to the order of court permitting it, files the following amendments to his Bill herein:

Amend paragraphs 11 and 12 of said Bill so that the same will read as follows:

"11. That said Commission and said Attorney General of Illinois claim that under said State statute and in the exercise of the police power of the State of Illinois delegated to said Commission by said statute, said Commission has the power to regulate the rates to be fixed, charged and collected by plaintiff as to all telegraph and telephone service rendered by plaintiff between points wholly within the State of Illinois,—that is as to all such intrastate telegraph and telephone service—and said Commission and Attorney General also claim that under the constitution of the United States it was beyond the power of Congress by said resolution of July 16, 1918, to deprive the said Commission of the right to fix and regulate the charges to

be made by plaintiff for such intrastate service, and that said resolution of July 16, 1918, if construed to confer on plaintiff the right to thus prescribe and fix the charges and rates for such intrastate telegraph and telephone service rendered by plaintiff in the State of Illinois, violates the constitution of the United States; and said Commission and said Attorney General also claim that said Illinois statute of June 30, 1913 confers upon said Utilities Commission, through the Attorney General of the State of Illinois, the right to sue by mandamus or for an injunction, plaintiff and his
 42 agents, who are co-operating with him in operating said telegraph system within that State, in the courts of the State of Illinois, and thereby prevent plaintiff and his said agents from charging the schedule of rates for telegraph service promulgated by plaintiff on the 29th of March, 1919, or any other rate, before the same shall have been submitted to said Utilities Commission and been approved by it; and to compel plaintiff to charge the rates fixed by said Commission."

"12. That plaintiff contends that said resolution of July 16, 1918, confers on him the right to fix the rates and charges for such intrastate telegraph and telephone service within the State of Illinois (and other states) and that, if said Illinois statute creating said Utilities Commission be construed, as claimed by said Commission and said Attorney General, to require plaintiff to comply with said State statute and prescribe only such rates for such intrastate service as said Utilities Commission shall approve, and to confer on said Utilities Commission the right to sue by mandamus or on injunction plaintiff or his said agents in any court, State or Federal, said State statute violates those provisions of the constitution of the United States which confer on Congress and the President of the United States exclusive powers to declare and conduct war, and make all necessary and proper laws for carrying into execution said powers, and which also confer upon the United States the right not to be sued in any court without its consent."

ALBERT S. BURLESON,

Postmaster General of the United States.

By HENRY S. ROBBINS,

One of His Solicitors.

STATE OF ILLINOIS,

County of Cook, ss:

Henry S. Robbins, being first duly sworn, on oath deposes and says that he is one of the solicitors for the plaintiff in the above entitled cause and is authorized by the plaintiff to make this
 43 affidavit, and that affiant knows the contents of the foregoing amendments to paragraphs 11 and 12 of said Bill, and that the allegations of said amended paragraph 12 are true of his own knowledge and that the allegations of said paragraph 11 this affiant believes to be true.

HENRY S. ROBBINS.

Subscribed and sworn to before me this 14th day of April, 1919.

A. S. PAPENGUTH,
Notary Public.

[SEAL.]

[Endorsed:] Filed Apr. 14, 1919. T. C. MacMillan, Clerk.

44 And on to-wit: the 14th day of April, 1919, come the defendants herein by their attorneys and filed in the Clerk's office of said Court their certain Answer in words and figures following, to-wit:

45 In the District Court of the United States, for the Northern District of Illinois, Northern Division.

In Equity.

ALBERT S. BURLESON, Postmaster General, Plaintiff,

vs.

THOMAS E. DEMPCY et al., Defendants.

The Answer of the Defendants, Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, Constituting the Members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois and Edward J. Brundage, Attorney General of the State of Illinois, to the Bill of Complaint of Albert S. Burleson, Postmaster General, Complainant.

Edward J. Brundage, Attorney General, Attorney for Defendants.
George T. Buckingham, Matthew Mills, Raymond S. Pruitt, Assistant Attorneys General, Of Counsel.

46 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity.

ALBERT S. BURLESON, Postmaster General, Plaintiff,

vs.

THOMAS E. DEMPCY et al., Defendants.

The Answer of the Defendants, Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, Constituting the Members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois and Edward J. Brundage, Attorney General of the State of Illinois, to the Bill of Complaint of Albert S. Burleson, Postmaster General, Complainant.

These defendants, Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the

members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois and Edward J. Brundage, Attorney General of the State of Illinois, now, and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can, or may be had or taken to the many errors, uncertainties and other imperfections in said bill contained, for answer thereunto, or to so much and such parts as these defendants are advised it is, material or necessary for them to make answer unto, answering, say:

47 1. These defendants admit that the complainant, Albert S. Burleson, is a citizen of the State of Texas and is the Postmaster General of the United States, having an official residence in the City of Washington, in the District of Columbia, and that the defendants are the duly constituted officials of the State of Illinois as named in said bill of complaint, and are citizens of the State of Illinois and residents within said state.

2. Defendants admit that on April 2, 1917, the Congress of the United States adopted a joint resolution which was thereafter approved by the President of the United States, declaring the existence of a state of war between the United States and the Imperial German Government, and authorizing and directing the President to employ the entire military and naval force of the United States and the resources of the Government to carry on said war against the Imperial German Government, and to bring the conflict to a successful termination.

3. Defendants admit that on July 16, 1918, the Congress adopted the joint resolution, in words and figures as set out in paragraph 2 of complainant's bill of complaint, authorizing and directing the President of the United States, during the continuance of said war with Germany, whenever he should deem it necessary for the national security or defense, to supervise or take possession and assume control of any telegraph, telephone, marine cable or radio system or systems, or any part thereof, and to operate the same for the duration of the war, said operation and supervision, however, to be subject to existing laws and powers of the states in relation to
48 taxation and to the lawful police regulations of the several states, except wherein such laws, powers and regulations effect the transmission of Government communications or the issue of stocks and bonds by such system or systems.

4. Defendants admit that on July 22, 1918, the President of the United States, purporting to act under the authority of said congressional resolution of July 16, 1918, issued a certain proclamation as set out in full in paragraph 3 of complainant's bill of complaint, wherein and whereby the said President of the United States undertook to take possession and assume control and supervision of each and every telegraph and telephone system, and every part thereof, within the jurisdiction of the United States, and to supervise and operate the same through the Postmaster General of the United States, in accordance with the purported power conferred upon, and vested in the President of the United States by said Congressional resolution.

5. Defendants admit that when the Congress adopted said resolution of July 16, 1918, it did not, by appropriation from the funds of the United States, provide the Postmaster General with any money or credit with which to operate said telegraph and telephone systems, and has not since provided such money or credit, except as the same has been collected from the users of telegraph and telephone service and the patrons and customers of the telegraph and telephone systems so seized and operated by the Postmaster General.

6. Defendants admit that pursuant to said proclamation, the President of the United States did, at 12 o'clock midnight, on July 31, 1918, take possession and assume control and supervision of all the telegraph and telephone systems in the United States, and that said control and supervision has been, from such date to the present time, exercised and is being exercised through the Postmaster General of the United States, and that on the 1st day of August, 1918, the complainant, as said Postmaster General, issued the order set out in full in paragraph 5 of complainant's bill of complaint.

7. Defendants admit that since said date, the various telegraph and telephone systems have been operated under the directions of the Postmaster General under the names of the respective companies, associations and organizations theretofore operating said systems respectively, and that most of the officers, employees and agents previously used by said companies in the operation of their respective systems, have been continued in their former employment, and that said telegraph and telephone systems have continued to be operated under their direction and control.

8. Defendants further admit that on or about December 13, 1918, the Postmaster General appointed an operating board, composed of certain individuals as named in paragraph 7 of complainant's bill of complaint, which board was vested with certain authority in connection with the operation of the telegraph and telephone service of said companies while under Government control, not including, however, any power or authority to increase or modify the then existing rates charged and collected by said telephone and telegraph companies for wholly intrastate service.

9. Defendants admit that on or about the 29th day of March, 1919, the complainant, as said Postmaster General, undertook to issue a certain order No. 2940, prescribing certain increased schedules, applicable to the rates to be charged for the transmission of telegrams and for the use of commercial and government leased wires between all points in the United States, including intrastate service between points lying wholly within the State of Illinois, and that said increases amounted to an average of twenty (20) per cent over and above the rates theretofore charged for such service, but answering defendants deny that such increase was necessary either for the purpose of raising additional revenue or for any other legitimate governmental purpose whatsoever, and on the contrary, charge that such increases were unnecessary, illegal and void, and constituted an act upon the part of the Postmaster General which was wholly ultra vires and beyond the powers vested in, and con-

ferred upon him by said Congressional Act of July 16, 1918, and said Presidential Proclamation of July 22, 1918.

10. Defendants admit that by an Act of the Illinois Legislature, approved June 30, 1913, and in force January 1, 1914 there was created a State Public Utilities Commission (now the Public Utilities Commission of Illinois), consisting of five members, and that the five defendants first named in complainant's bill of complaint are the present members constituting the said Public Utilities Commission of Illinois; that by said act, the said Commission is given general supervision and control over all public utilities which own,

operate, manage or control within the State of Illinois, for
51 public use, any plant, equipment or property used, or to be used for, or in connection with the transmission of telegraph and telephone messages between points within said state; that, among other powers conferred upon said Commission, it is authorized to fix and prescribe reasonable rates to be charged and collected by telegraph and telephone companies for intrastate service between points lying wholly within the State of Illinois, and that said statute provides that no public utility shall increase any rates or other charges, under any circumstances whatsoever, except upon a showing before the Commission and a finding by the Commission that such increase is justified, and that said statute specifically confers upon the Commission power and authority, whenever any such public utility shall seek to advance its rates without such approval of said Commission, to commence an action for the purpose of enjoining such threatened violations of law or of the orders of the Commission, and that said statute also provides for fines and imprisonments to be imposed upon any person or persons who violate the provisions of said act.

11. Defendants deny that on the 4th day of April, 1919, the said Public Utilities Commission instructed the Attorney General of Illinois to begin legal proceedings in one of the Illinois courts, under said statute, against the Postmaster General or his employes, in Illinois, to enjoin and prevent him or them from continuing in force, as to all intrastate service within the State of Illinois, said increased rates for telegraph and leased wire service instituted pursuant to the said Postmaster General's order of March 29,
52 1918, but defendants admit that on or about said date, the said Public Utilities Commission adopted a certain resolution, directing the Attorney General to take such steps as he might deem necessary and appropriate to prevent the said increase in rates for telegraphic service within the State of Illinois, a true copy of which resolution is hereto attached and made a part hereof, and identified as "Exhibit A."

12. Defendants further answering, admit that the said Public Utilities Commission of Illinois and the Attorney General of Illinois claim that, under the provisions of said Public Utilities Commission Law and in the exercise of the police power of the State of Illinois, delegated to said Commission by said statute, the said Commission has, and retains full power and authority to regulate the rates to be

fixed, charged, collected and received by the telegraph and telephone companies and systems furnishing service to the public between points lying wholly within the State of Illinois while said systems are being operated by the Postmaster General, but these defendants deny that the said Public Utilities Commission and the Attorney General of Illinois have ever claimed, or do now claim that under the Constitution of the United States it was beyond the power of the Congress of the United States, under its constitutional powers to make war, to deprive the said Public Utilities Commission of the right to fix and regulate the charges to be made for such intrastate service, and deny that said resolution of July 16, 1918, if construed to confer on the plaintiff the right to thus prescribe and fix the

53 charges and rates for said intrastate telegraph service furnished to the public between points lying wholly within the State of Illinois, violates the Constitution of the United States, but on the contrary, defendants admit that the Congress of the United States, under its constitutional powers to make war, might have seized and operated all the telegraph and telephone systems of the country through the President of the United States or any other official, and have conferred upon such official the power to operate said systems and properties in such manner as might have been necessary, and to do all other things which might seem needful in and about the carrying on of the war with the Germanic powers and the bringing of said war to a successful conclusion.

13. Defendants deny, however, that the said resolution of July 16, 1918, confers upon the President of the United States or the Postmaster General any power or right to fix the rates and charges for intrastate telegraph and telephone service furnished and rendered between points lying wholly within the State of Illinois, and on the contrary, charge that said Act of July 16, 1918, specifically reserves to the states their lawful police regulations, including the power to prescribe reasonable rates for such intrastate telegraph and telephone service, and in effect, directs the President of the United States to operate such telegraph and telephone systems in compliance with existing state laws, and defendants deny that said Illinois statute, in so far as it requires public utilities, operating and owning telegraph and telephone systems within the State of Illinois, to comply with said state statute, whether operated by the corporate

54 owners of the property or under the direction of the Postmaster General of the United States, violates any provisions of the Constitution of the United States which confer on Congress and the President of the United States exclusive power to declare and conduct war, and to make all necessary and proper laws for carrying into execution said power.

14. Defendants admit that the amount involved in the matters in dispute, exclusive of interest and costs, is more than Three Thousand Dollars.

15. Defendants, further answering and praying that they may have the same advantage as if a cross-bill or counter-claim were filed

by them, set out and charge that on or about the 1st day of July, 1918, the Postmaster General of the United States, pursuant to the powers conferred upon him by said Congressional resolution of July 16, 1918, and said Presidential Proclamation of July 22, 1918, assumed possession and control of all the properties within the State of Illinois, belonging to the Western Union Telegraph Company, a corporation, organized and existing under the laws of the State of New York, and a citizen and a resident of the State of New York, and the Postal Telegraph-Cable Company, a corporation, organized and existing under the laws of the State of New York, and a citizen and resident of the State of New York, which, answering, defendants pray may be made parties to this suit and defendants to their answer in so far as said answer sets out a counter-claim and prays for affirmative relief; that said Western Union Telegraph Company and said Postal Telegraph-Cable Company, and each of them, own and operate, within the State of Illinois, certain wires, instruments and other property which

55 is now, and has been, for many years last past, used in connection with the transmission of messages, either over its own or connecting lines between points lying wholly within the State of Illinois, and has been, and is now engaged in intrastate telegraph service between points wholly within the State of Illinois; that each of said corporations is a public utility, subject to the regulation and control vested in the Public Utilities Commission of Illinois under the provisions of an Act entitled "An Act to provide for the Regulation of Public Utilities," approved June 30, 1913, and in force January 1, 1914, and acts amendatory thereto, which act will be hereafter designated the "Illinois Public Utilities Commission Law"; that each of said corporations, at all times prior to the said 31st day of July, 1918, conducted its said telegraph business through its own agents and employees, and under the direction of its duly designated corporate officials, and for its own account exclusively, in accordance with the existing laws of the United States, and the State of Illinois, and subject to the limitations, restrictions and regulations imposed upon such public utility corporations by the Illinois Public Utilities Commission Law and by the various orders of the said Public Utilities Commission of Illinois; that prior to the said 31st day of July, 1918, each of said corporations had filed with the Public Utilities Commission of Illinois certain schedules of rates applicable to the transmission of messages by telegraph between points lying wholly within the State of Illinois, which rates were reasonable and just, and were accepted and approved by said Public Utilities Commission of Illinois.

56 16. Defendants further charge that at all times subsequent to the said 31st day of July, 1918, and up to the 29th day of March, 1919, the said defendant corporations continued to operate their lines and public utility property, and to furnish intrastate telegraph service to the public between points lying wholly within the State of Illinois while said lines were under the direction and control of the Postmaster General, at the same rates heretofore

charged and collected by them for such service, and accepted and approved by said Public Utilities Commission of Illinois; that said rates so prescribed by the Public Utilities Commission of Illinois and heretofore in force within the state, are lawful and reasonable intrastate rates, and are a lawful police regulation of the State of Illinois, and have remained, and are now in full force and effect under the express proviso contained in said Act of Congress of July 16, 1918; and that said Albert S. Burleson, Postmaster General, is wholly without power and authority to repeal or change or amend said intrastate rates and charges heretofore in force within the State of Illinois, and to establish new and increased rates applicable to the transmission of messages by telegraph between points lying wholly within the State of Illinois, except in so far as the establishment of such new and different rates may affect the transmission of Government communications for war purposes or the issue of stocks or bonds by said companies.

17. That it is provided by Section 32 of said Public Utilities Commission Law that all rates or other charges made, demanded or received by any public utility, for any service rendered or to be rendered, shall be just and reasonable; that Section 33 of said Act provides that every public utility shall file with said Public Utilities Commission, and keep open for public inspection, schedules showing all rates and other charges and classifications which are in force at the time, for any service performed by it; that Section 35 of said Act provides that no public utility shall undertake to perform any service or to furnish any product or commodity unless or until the rates and other charges and classifications applicable to such service, product or commodity, shall have been filed and published in accordance with the provisions of said act; that Section 36 of said act provides that unless the Commission otherwise orders, no change shall be made by any public utility in any rate or other charge or classification, except after thirty days' notice to the Commission, and to the public, such notice to be given by filing with the Commission and keeping open for public inspection, new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when such change or changes go into effect; and that no public utility shall increase any rate or other change under any circumstances whatsoever, except upon a showing before the Commission, and a finding by the Commission that such increase is justified; that Section 37 of said Act further provides that except in certain cases of emergency where a service is performed not specifically covered by schedules filed, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates or other charges applicable to such service as specified in its schedules on file and in effect at the time such service is rendered.

18. That on or about the 27th day of March, 1919, the said Postmaster General announced, through advertisements in the Chicago newspapers, that on or about the 29th day of March, 1919, the rates

applicable to the transmission of messengers by telegraph over all lines operated and controlled by the Postmaster General, including the transmission of messages by telegraph between points within the State of Illinois, would be increased, as stated in complainant's bill of complaint; that neither the complainant nor the corporation defendants submitted to the Public Utilities Commission of Illinois any application for permission or authority to withdraw or discontinue the schedules theretofore in force in the State of Illinois and applicable to the transmission of messages by telegraph between points wholly within the State of Illinois, nor have said corporation defendants nor said Postmaster General made application to said Public Utilities Commission for authority to put into full force and effect the said new tariffs and charges so promulgated by the Postmaster General, but on the contrary, the said increased rates and charges have been put into force and effect by said corporation defendants, under the direction of said Postmaster General, without any authority or order from the Public Utilities Commission of Illinois, without giving to the Commission, as provided by law, thirty days' notice of the date when such changes were to become effective, without giving to the authorities of the State of Illinois, charged

59 with the enforcement of the laws, any opportunity to secure relief against such threatened violations of law by injunction or mandamus proceedings filed in compliance with Section 75 of the Public Utilities Commission Law, and answering defendants charge that the corporation defendants, under the direction of said Postmaster General, will continue to charge, collect, demand and receive such increased and unauthorized rates and charges for telegraph service between points lying wholly within the State of Illinois, unless they are severally restrained and enjoined by the order of this honorable court.

19. Defendants ask that, by this answer, they may be granted the same relief against the complainant and the said corporations who are made defendants to this answer, as might have been obtained through a suit filed by the Attorney General of Illinois under the provisions of Section 75 of said Public Utilities Commission Law, and brought pursuant to the order of said Public Utilities Commission, a copy of which is hereto attached and identified as "Exhibit A" for the purpose of enjoining and restraining the said threatened violations of law by the said complainant and the said corporations.

20. Defendants charge that the said rates which the Postmaster General has so instituted and promulgated, and which the said corporation defendants are collecting and receiving, applicable to the transmission of messages by telegraph between points lying wholly within the State of Illinois, are greatly in excess of the rates heretofore established and in force for such service, and will increase the

60 cost of such service to the citizens of Illinois using the facilities of said companies, approximately twenty (20) per cent; that such increased tariffs and charges have materially increased, to the millions of citizens of the state who use the facilities offered by said companies to the public, the cost of transmitting messages by telegraph between points lying wholly within the State of

Illinois, and are imposing, and will continue to impose an increased and unjustified burden upon the customers and patrons of said corporations and upon the public, generally, in the State of Illinois; that said increased schedules and rates have not been, by said Public Utilities Commission of Illinois, found to be reasonable and just; that said Commission has made no finding that any increase whatsoever in the rate charged for such service is justified at the present time; that said increased rates are not based upon a survey or valuation of the property of the corporation defendants, or any of them, devoted to the public use, or upon the cost of furnishing the service which they provide, covering the transmission of telegraph messages between points lying wholly in the State of Illinois, but that said increased rates and charges are, on the contrary, wholly arbitrary, unauthorized and unjustified, and do not, and will not tend, in any way or manner, to affect the transmission of Government messages or the issue of stocks and bonds by such telegraph system or systems, or to assist the United States Government in the prosecution of the war with the Germanic powers now terminated by the armistice of November 11, 1918, but are wholly subject to the lawful and existing police regulations of the State of Illinois.

- 61 21. Defendants further charge that many thousands of intrastate messages are transmitted each day by telegraph between points lying wholly within the State of Illinois; that it would be impossible to bring before this court, or any court, all of the persons who would be unjustly charged, and required to pay such increased rates if such rates are permitted to remain in force and effect in violation of the existing laws and police regulations of the state and in non-compliance with the provisions of said Public Utilities Commission Law; that the penalty provided for a violation of said act is a fine of not less than Five Hundred Dollars (\$500.00) and not more than Two Thousand Dollars (\$2,000.00) for each offense; that under the provisions of said act, every violation thereof is constituted a separate and distinct offense; that in case of a continued violation, each day's continuance thereof is designated to be a separate and distinct offense; and that the enforcement of said act, through the institution of suits for penalties, would involve the commencement of a large number of proceedings against all of the corporations named defendants hereto, and would impose upon the courts and upon the public officers charged with the duty of enforcing the law, through the multiplicity of suits, such a burden that it would be impossible to adequately enforce the laws of the State of Illinois through said suits for penalties; and that answering defendants have no adequate remedy at law for the protection of the rights of the people of the State of Illinois, who are the users of said telegraph service, against such unauthorized, illegal and unjustified rates, and that the said complainant and the said corporation defendants, unless prevented by the injunction of this court, will by their concerted action, destroy the rights of the answering defendants and of the People of the State of Illinois under the said Illinois Public Utilities Commission Law.
- 62

22. Wherefor the answering defendants pray:

1. That the Western Union Telegraph Company and the Postal Telegraph-Cable Company may be made defendants to this answer, and that writs of subpoena may issue, directed to the said defendants, Western Union Telegraph Company and Postal Telegraph-Cable Company, commanding each of them to appear herein and answer, but not under oath, answer under oath being hereby expressly waived, and that the complainant may be required in like manner (answer under oath being waived) to answer the allegations contained herein insofar as answering defendants have prayed for affirmative relief against complainant, and that complainant and the said corporation defendants may abide by, and perform such orders and decrees as the court may make in the premises.

2. That the said complainant, Albert S. Burleson, Postmaster General, and said corporation defendants, Western Union Telegraph Company and Postal Telegraph-Cable Company, may be, upon preliminary application, temporarily enjoined and restrained and by the final decree of this court perpetually enjoined and restrained from charging, demanding, collecting or receiving, for the transmission of messages by telegraph between points lying wholly within the State of Illinois, any rates other or different from the rates and tariffs applicable to the transmission of such messages as specified in the schedules heretofore filed by said corporations with

63 the Public Utilities Commission of Illinois and heretofore in force prior to the 29th day of March, 1919, and from charging, demanding, collecting or receiving, for the transmission of messages between points lying wholly within the State of Illinois, the increased rates therefor, as authorized and ordered by the said Postmaster General of the United States, until said increased rates and charges shall be approved by the Public Utilities Commission of Illinois, or until the further order of this court.

3. That answering defendants may have such further and other relief as equity may require and your honors may deem meet.

THOMAS E. DEMPCY,
WALTER A. SHAW,
PATRICK J. LUCEY,
JAMES H. WILKERSON,
FRANK H. FUNK,

*As Members of, and Constituting the
Public Utilities Commission of Illinois.*

EDWARD J. BRUNDAGE,
Attorney General.

GEORGE T. BUCKINGHAM,
MATTHEW MILLS,
RAYMOND S. PRUITT,

*Assistant Attorneys General,
Of Counsel.*

64 STATE OF ILLINOIS,
County of Cook, ss:

I, Raymond S. Pruitt, being upon oath first duly sworn, depose and say that I am an Assistant Attorney General of the State of

Illinois and am duly authorized to make this affidavit in this suit on behalf of the Attorney General of the State of Illinois and the members of the Public Utilities Commission of Illinois of the State of Illinois; that I have read the foregoing petition and know the contents thereof; and know that the same is true.

RAYMOND S. PRUITT.

Subscribed and sworn to before me this 12th day of April, A. D. 1919.

MAE BRYANT,
Notary Public.

[SEAL.]

EXHIBIT A.

Resolution.

Whereas, It has been brought to the attention of the Commission that Albert S. Burleson, Postmaster General, in charge of the telegraph lines in Illinois, has promulgated certain telegraph rates, increasing the rates for intrastate telegraph service within the State of Illinois without compliance with the general orders and rules of this Commission, with reference to filing schedules thereof with this Commission,

Be it resolved, That Edward J. Brundage, Attorney General, be, and is hereby, requested to take such steps as he may deem necessary and appropriate to prevent the said increase in rates for telegraphic service within the State of Illinois, and

Be it further resolved, That the Secretary be directed to transmit copy of this resolution at once to the Attorney General.

[Endorsed:] Filed April 14, 1919. T. C. MacMillan, Clerk.

And afterwards, to wit: on the 14th day of April, 1919, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Francis E. Baker, Circuit Judge, Honorable George T. Page, Circuit Judge, Honorable Kenesaw M. Landis, District Judge, appears the following entry, to wit:

In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Order.

Before Circuit Judge Baker, Circuit Judge Page, and District Judge Landis.

This cause coming on for hearing upon the motion of the complainant for a temporary injunction pursuant to the prayer of the

bill, and all parties being present by counsel, and the court having considered the bill, and being fully advised in the premises.

It is ordered that a temporary injunction issue herein, restraining, until the further order of this court, Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, and each of them, and each of their agents, deputies and employees from interfering, directly or indirectly, by suit or other prosecution, civil or criminal, or in any other manner whatsoever, with plaintiff or any of his agents or employees in charging and collecting for telegraphic service and leased wire service the rates prescribed by plaintiff's said order of March 29, 1919, or any other charges that may be hereafter prescribed by plaintiff for such service.

BAKER, C. J.

PAGE, C. J.

K. M. L., D. J.

4/14/19.

And on to wit: the 15th day of April, 1919, there was filed in the Clerk's office of said Court a certain Notice in words and figures following, to wit:

In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

To Henry S. Robbins, Solicitor for Complainant:

You will please take notice that on Tuesday, the 15th day of April, 1919, at the opening of court, I shall appear before His Honor, Judge Landis, in his court room in the Federal Building, Chicago, and shall ask to dismiss, as to the defendants, Western Union Telegraph Company and Postal Telegraph & Cable Company, the answer and cross petition of the Public Utilities Commission of Illinois and the Attorney General of Illinois, and shall ask that a rule be entered upon the complainant to answer same within five days, and that said cause be set down for hearing on Monday, April 21, 1919; at which time and place you may appear if you so see fit.

EDWARD J. BRUNDAGE.

Received a copy of the above notice this — day of April, A. D. 1919.

HENRY S. ROBBINS,

Solicitor for Complainant.

[Endorsed:] Filed Apr. 15, 1919. T. C. MacMillan, Clerk.

71 And to wit: the 15th day of April, 1919, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to wit:

72 In the District Court of the United States, Northern District of Illinois, Eastern Division.

TUESDAY, April 15, 1919.

Present: Honorable Kenesaw M. Landis, District Judge.

Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Upon motion of the defendants, it is ordered by the Court that the Answer and Cross-Petition of the Public Utilities Commission of Illinois and the Attorney General of Illinois, filed herein, be and the same hereby is dismissed as to cross-defendants, Western Union Telegraph Company and Postal Telegraph-Cable Company.

It is further ordered that the complainant reply to Answer of the defendants, heretofore filed herein, in five days from this date, and that said cause be set down for hearing on Monday, April 21, 1919.

73 And on to-wit: the 21st day of April, 1919, there was filed in the Clerk's office of said Court a certain Stipulation in words and figures following, to-wit:

74 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Stipulation.

For the purposes of this suit, and not otherwise, it is stipulated that on January 20, 1919, pursuant to the request of the Public Utilities Commission of Illinois, defendants in the above entitled cause, the Attorney General instituted, in the Superior Court of Cook County, a suit for the purpose of enjoining the Chicago Telephone Company and the American Telephone & Telegraph Company and the presi-

dent of each of them, from putting into effect in the State of Illinois certain increased charges and tariffs for long distance telephone service between points lying wholly within the State of Illinois, which had been prescribed by the plaintiff herein, acting under the resolution set out in the bill herein, under which said Postmaster General had taken possession of, and the telephone systems of said Chicago Telephone Company and said American Telephone & Telegraph Company and under which they were being operated.

75 and that the Honorable Charles M. Foell, Chancellor of said Superior Court, on motion of said Attorney General, issued a temporary injunction enjoining said defendants to said suit and their agents from putting in force said increased telephone rates until the further order of said court, and that said judge has, after full argument, upon the final hearing of said cause, rendered a decision and filed a written opinion in said cause holding that the plaintiffs in said suit are entitled to have said temporary injunction made permanent.

EDWARD J. BRUNDAGE,
Attorney General.

[Endorsed:] Filed April 21, 1919. T. C. MacMillan, Clerk.

75½ And on to-wit: the 21st day of April, 1919, there was filed in the Clerk's office of said Court a certain Stipulation of Facts in words and figures following, to-wit:

76 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Stipulation of Facts.

For the purpose of facilitating the final hearing of the above entitled cause, the parties hereto, by their respective solicitors, hereby enter into the following stipulation of facts, and for the purposes of this proceeding only and for no other purpose whatsoever, hereby stipulate and agree as follows:

1. Defendants stipulate and agree that the complainant, Albert S. Burleson, Postmaster-General of the United States, is a citizen of the State of Texas, having an official residence in the city of Washington, in the District of Columbia; that the defendants, Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, and Edward J. Brundage, Attorney General of Illinois, are citizens and residents of the State of Illinois, as charged in said bill of complaint; defendants also admit all of the

facts set forth and well pleaded in paragraphs 1 to 7 inclusive, of complainant's bill of complaint; also that complainant did on March 29, 1919, issue the order set out in paragraph 8 of said bill of complaint, but defendants deny that said order was lawful, 77 or that the increase in rates for telegraph service put into effect pursuant thereto was necessary or lawful; defendants also admit all the facts set forth and well pleaded in paragraph 9 of said bill of complaint, and that the Public Utilities Commission of Illinois on April 4, 1919, entered the order set forth in Exhibit A to defendant's answer filed herein.

2. Defendants further admit that they claim the power to regulate rates to be fixed, charged and collected by the telegraph companies for telegraph service between points lying wholly within the State of Illinois, rendered while said companies were operated and controlled by the Postmaster-General, but expressly disavow any contention or claim that Congress, in the exercise of its war powers, might not or could not have by proper measures deprived the said Public Utilities Commission of Illinois of all right and authority to fix and regulate the said charges for intrastate service during the period of war with the Imperial German Government.

3. Defendants further admit that plaintiff claims under said resolution of July 16, 1918, the right to fix the rates and charges for intrastate telegraph service within the State of Illinois and other States, and also to the allegations of facts well pleaded in paragraphs 13 and 14 of said bill of complaint.

4. Plaintiff, for the purposes aforesaid, admits all allegations of fact well pleaded contained in paragraphs 15 and 18 inclusive, of the answer filed by the defendants in this cause.

78 5. Plaintiff further admits that at all times subsequent to the said 31st day of July, 1918, and up to the 29th day of March, 1919, the lines of the Western Union Telegraph Company and the Postal Telegraph-Cable Company were continuously operated so as to furnish intrastate telegraph service to the public between the points lying wholly within the State of Illinois and that said operation was continuously under the direction and control of the Postmaster-General at the same rates heretofore charged and collected for such intrastate service and accepted and approved by said Public Utilities Commission of Illinois.

6. Plaintiff further admits that the rates which the Postmaster General has instituted and promulgated and which are now being collected and received for intrastate telegraph business are approximately twenty per cent. higher than those heretofore enforced; that said increased schedule and rates have not been by said Public Utilities Commission found to be reasonable and just and have not been submitted to said Public Utilities Commission in any way.

HENRY S. ROBBINS,
Solicitor for Plaintiff.
EDWARD J. BRUNDAGE,
Attorney General of Illinois,
Solicitor for Defendants.

[Endorsed:] Filed April 21, 1919. T. C. MacMillan, Clerk.

79 And on to-wit: the 26th day of April, 1919, come the plaintiff herein by his attorney and filed in the Clerk's office of said Court his certain Motion to Strike in words and figures following, to-wit:

80 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Motion to Strike.

Now comes the plaintiff and moves to strike from the answer paragraphs 15 to 22, inclusive, as irrelevant, impertinent and immaterial.

ALBERT S. BURLESON,
Postmaster General of the United States,
By HENRY S. ROBBINS,
One of His Solicitors.

(Endorsed:) Filed April 26, 1919. T. C. MacMillan, Clerk.

81 And on to-wit: the 26th day of April, 1919, come the plaintiff herein by his attorney and filed in the Clerk's office of said Court his certain Answer to Cross-Bill in words and figures following, to-wit:

82 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity: No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Answer to Cross-Bill.

Now comes the plaintiff and for answer to so much of said answer of the defendants as is in the nature of a cross bill and as it is proper for plaintiff to make answer unto, says, that plaintiff denies each and every of the allegations of said answer except such as are stipulated

by plaintiff in the stipulation signed by him and heretofore filed in the above entitled cause, and having fully answered plaintiff asks to be hence dismissed, etc.

ALBERT S. BURLESON,
Postmaster General of the United States,
 By HENRY S. ROBBINS,
One of His Solicitors.

(Endorsed:) Filed April 26, 1919. T. C. MacMillan, Clerk.

83 And to-wit: the 26th day of April, 1919, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to-wit:

84 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Decree.

Before Honorable Kenesaw M. Landis, District Judge.

This cause came on for a final hearing at this term and was argued by counsel, and thereupon upon consideration thereof,

It was ordered, adjudged and decreed That the motion of plaintiff to strike from the answer paragraphs 15 to 22, inclusive, thereof, and the same is hereby denied, and thereupon plaintiff filed his Answer to said cross-bill of said defendant.

It is further ordered, adjudged and decreed That the plaintiff's bill be dismissed for want of equity, and that a permanent injunction issue herein enjoining the plaintiff and each of his agents, deputies and employees from charging, demanding, collecting or receiving, for the transmission of messages by telegraph between points lying wholly within the State of Illinois, any rates other or different from the rates and tariffs applicable to the transmission of such messages as specified in the schedules heretofore filed by said

85 corporations with the Public Utilities Commission of Illinois and heretofore in force prior to the 29th day of March, 1919, and from charging, demanding, collecting or receiving, for the

transmission of messages between points lying wholly within the State of Illinois, the increased rates therefor, as authorized and ordered by the said Postmaster General of the United States, until said increased rates and charges shall be approved by the Public Utilities Commission of Illinois.

Enter:

_____,
Judge.

86 And on to-wit: the 26th day of April, 1919, come- the plaintiff herein by his attorney and filed in the Clerk's office of said Court his certain Petition for Appeal in words and figures following, to-wit:

87 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

vs.

THOMAS E. DEMPCY et al.

Petition for Appeal.

The above named plaintiff, conceiving himself to be aggrieved by the final decree of this court, entered on the 26th day of April, 1919, hereby appeals from said decree to the Supreme Court of the United States for the reasons specified in the assignments of error this day filed herein, and prays that this appeal may be allowed, and that a transcript of the record of all proceedings herein may be forthwith transmitted to said Supreme Court, and that the temporary injunction herein be continued in force for a period of 10 days for the purpose of enabling plaintiff to apply to the Supreme Court for a further continuance of said injunction.

ALBERT S. BURLESON,
Postmaster General of the United States.

By HENRY S. ROBBINS,
One of his Solicitors.

(Endorsed:) Filed April 26, 1919, T. C. MacMillan, Clerk.

88 And on to-wit: the 26th day of April, 1919, come- the plaintiff herein by his attorney and filed in the Clerk's office of said Court his certain Assignment of Errors in words and figures following, to-wit;

89 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

VS.

THOMAS E. DEMPCY et al.

Assignment of Errors.

Now comes the plaintiff and files the following assignments of error for grounds of reversal on appeal in the above-entitled cause:

1. That the District Court erred in not granting plaintiff's motion to strike out paragraphs 15 to 22 of the answer of defendants.

2. That the District Court erred in dismissing plaintiff's bill for want of equity.

3. That the District Court erred in not entering a decree making permanent the temporary injunction theretofore issued in said cause.

4. That the District Court erred in not entering a decree in pursuance of the prayer of the bill.

5. That the District Court erred in not dismissing the cross-bill for want of equity.

6. That the District Court erred in entering the decree on the cross-bill enjoining plaintiff.

90 7. That the District Court erred in entering the final decree in the above-entitled cause.

ALBERT S. BURLESON,

Postmaster General of the United States.

By HENRY S. ROBBINS,

One of His Solicitors.

(Endorsed:) Filed April 26th, 1919, T. C. MacMillan, Clerk.

91 And to-wit: the 26th day of April, 1919, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to-wit:

92 In the District Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 1209.

ALBERT S. BURLESON, Postmaster General,

VS.

THOMAS E. DEMPCY et al.

Order.

Now comes the plaintiff, and it appearing to the court that a petition for appeal and assignments of error have been filed herein:

It is ordered That an appeal to the Supreme Court of the United States from the decree entered herein on the 26th day of April, 1919, be, and the same is, allowed, and that for the purpose of enabling said court to decide said appeal, a transcript of the record herein be forthwith transmitted to said court, and that the temporary injunction issued in the above-entitled cause remain in force for the period of 10 days from the entry of said decree, for the purpose of enabling the plaintiff to apply to the Supreme Court of the United States for a further continuance of said injunction pending said appeal.

93 NORTHERN DISTRICT OF ILLINOIS,
 Eastern Division, ss:

I, T. C. MacMillan, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with *Præcipe* filed in this Court in the cause entitled Albert S. Burleson, Postmaster General, plaintiff, versus Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, Defendants, No. 1209, as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 26th day of April A. D. 1919.

[Seal of the District Court of the United States for the Northern District of Illinois.]

T. C. MACMILLAN,

Clerk.

By ARTHUR E. CLAUSSEN,

Deputy Clerk.

94 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, Constituting the Members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, Edward J. Brundage, Attorney General of the State of Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to appeal filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Albert S.

Burleson, Postmaster General, is appellant, and you are appellee to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Kenesaw M. Landis, Judge of the District Court of the United States, this 26th day of April, in the year of our Lord one thousand nine hundred and 19.

95 I hereby accept service of the within citation for all of the appellees.

EDWARD J. BRUNDAGE,
Attorney General of the State of Illinois.

[Endorsed:] No. 1209. Supreme Court of the United States. Albert S. Burleson, Postmaster General, vs. Thomas E. Dempcy, et al, Citation to the Supreme Court of the United States.

Endorsed on cover: File No. 27,092. N. Illinois D. C. U. S. Term No. 1006. Albert S. Burleson, Postmaster General, appellant, vs. Thomas E. Dempcy, Walter A. Shaw, Patrick J. Lucey, James H. Wilkerson and Frank H. Funk, constituting the Public Utilities Commission of Illinois et al. Filed April 29, 1919. File No. 27,092.

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1918.

ALBERT S. BURLESON, POSTMASTER GENERAL,
Plaintiff, and Appellant,

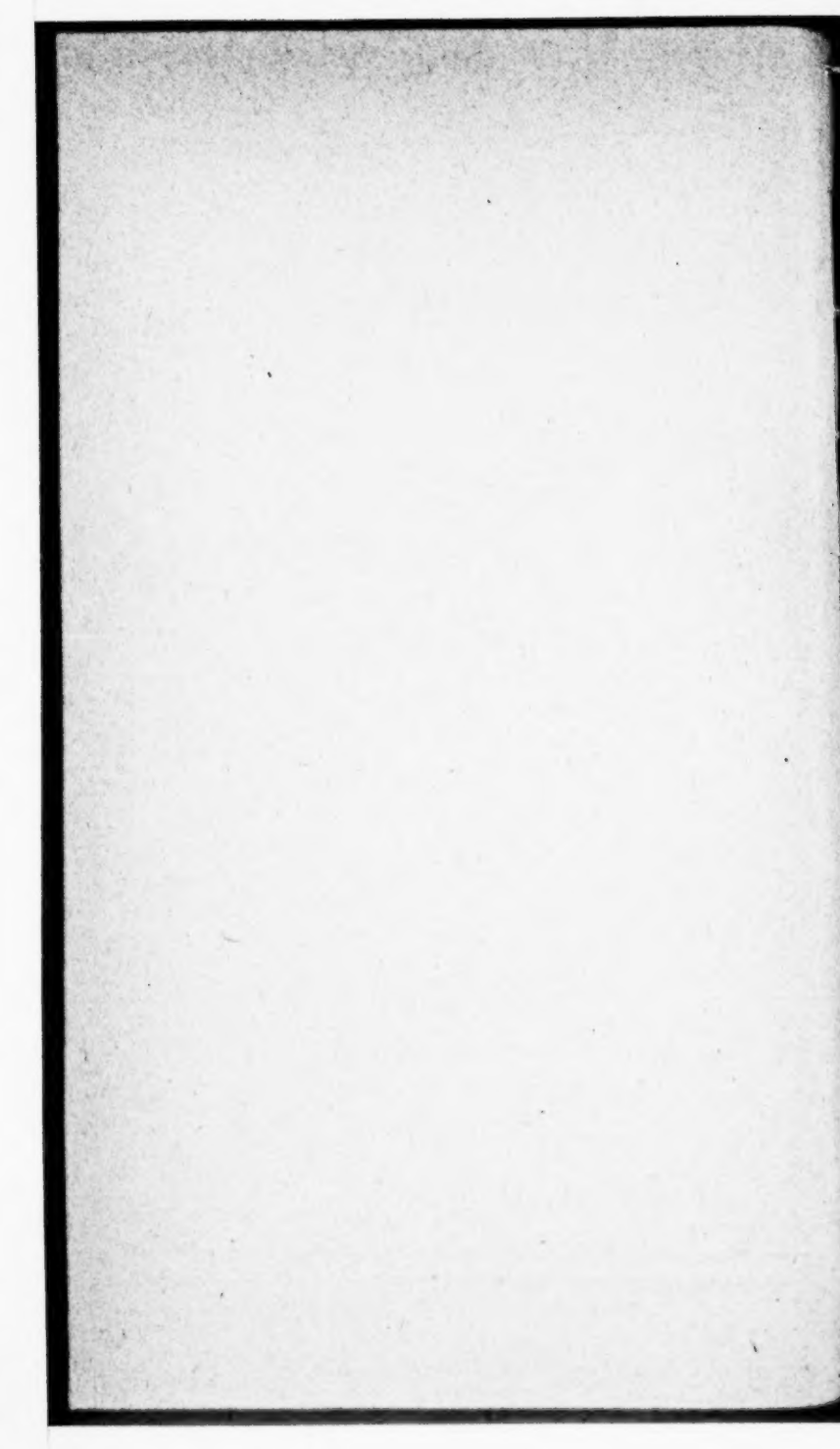
vs.

THOMAS E. DEMPCY, WALTER A. SHAW, PATRICK J.
LUCEY, JAMES H. WILKERSON, and FRANK H. FUNK,
Constituting the Members of the Public Utilities Com-
mission of Illinois, the Public Utilities Commission of
Illinois, EDWARD J. BRUNDAGE, Attorney General of
the State of Illinois, *Defendant, and Appellees.*

MOTION BY THE APPELLEES TO ADVANCE.

EDWARD J. BRUNDAGE,
*Attorney General of the
State of Illinois.*

GEO. T. BUCKINGHAM,
RAYMOND S. PRUITT,
MATTHEW MILLS,
*Assistant Attorneys General of the
State of Illinois.
Attorneys for Appellees.*



IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1918.

ALBERT S. BURLESON, POSTMASTER GENERAL,
Plaintiff, and Appellant,

vs.

THOMAS E. DEMPCY, WALTER A. SHAW, PATRICK J. LUCEY, JAMES H. WILKERSON, and FRANK H. FUNK, Constituting the Members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, EDWARD J. BRUNDAGE, Attorney General of the State of Illinois, *Defendant, and Appellees.*

MOTION BY THE APPELLEES TO ADVANCE.

Come now the Appellees in Case No. — and move the Court to advance said cause for hearing and to set the said Case No. — for hearing on May 5, A. D. 1919, with the cases of *Frederick J. MacLeod and Everett E. Stone, constituting the Public Service Commission of Massachusetts v. The New England Telephone & Telegraph Co.*, No. 957, October Term, A. D. 1918, and *State of South Dakota, ex rel, Byron S. Payne, as Attorney General, and John J. Murphy and P. W. Dougherty, as and constituting*

the Board of Railroad Commissioners of the State of South Dakota, v. Dakota Central Telephone Company, et al., No. 967, and *Northern Pacific Railway Co., et al., vs. State of North Dakota*, on the relation of the Attorney General, No. 976.

The grounds for this motion are:

First. That all of said cases arise out of the effort of Albert S. Burleson, Postmaster General of the United States, to put into force and effect certain advanced rates and charges for the transmission of messages by telegraph and telephone between various points in the United States during the period while certain telegraph and telephone companies are being operated by said Postmaster General pursuant to a Congressional Resolution of July 16, 1918.

Second. In all of said cases, and in this case, it is claimed by the state authorities concerned in this litigation that said Congressional Resolution, authorizing the operation and control of said telegraph and telephone lines by the President of the United States, expressly provided that nothing contained therein should be construed to amend, repeal, impair or affect the lawful police regulations of the several states, and that Congress, by said proviso, intended to retain in full force and effect the power of the states to fix the rates to be charged and collected by telegraph and telephone companies during the period of Federal control.

Third. Not only are all the questions involved in Case No. — identical with the questions involved in said above mentioned cases, which have been set for hearing on May 5, 1919, but in said case No. — all questions regarding the right of various state authorities to sue the Postmaster General are eliminated because of the fact that the Postmaster General himself instituted the litigation by appearing in the Federal Court and asking for an injunction against state authorities to restrain their interference with increased rates ordered and promulgated by him.

For this additional reason the public importance of the questions involved suggest the advisability and necessity of an early hearing and decision of this particular case, in order that the power and authority of the Postmaster General to fix rates during the period of Government control may be defined and determined by this court without reference to the question of the immunity of the Postmaster General from suit, or other matters of jurisdiction not affecting the merits of the real issues to be decided.

Notice of the intention of the Appellees in Case No. — to make this Motion has been served upon Appellant in that case.

EDWARD J. BRUNDAGE,
*Attorney General of the
State of Illinois.*

GEO. T. BUCKINGHAM,
RAYMOND S. PRUITT,
MATTHEW MILLS,
*Assistant Attorneys General of the
State of Illinois.
Attorneys for Appellees.*

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

ALBERT S. BURLESON, POSTMASTER GENERAL, appellant,

v.

THOMAS E. DEMPCY, ET AL., CONSTITUTING the members of the Public Utilities Commission of Illinois, the Public Utilities Commission of Illinois, and Edward J. Brundage, attorney general of Illinois.

No.—.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

RESPONSE OF APPELLANT TO MOTION TO ADVANCE.

Comes now the appellant in the above-stated case by the Solicitor General, and in response to the motion to advance the cause for hearing on May 5, 1919, presented therein by the appellee, says:

That the final decree in said case was rendered on April 26, 1919; that while an appeal was applied for by counsel for the Postmaster General resident in Chicago, Ill., on said date and was granted, the record in said case was not filed by said appellant but was filed by the appellees without the consent of the said appellant.

Appellant has serious doubt as to whether this court or the United States Circuit Court of Appeals for the Seventh Circuit has jurisdiction to entertain said appeal; that said case appears to involve the construction of the Joint Resolution of Congress of July 16, 1918, and of the respective powers conferred upon the President of the United States and his appointees thereby, and those reserved to the several States under the proviso of said Resolution and not any question arising under the Constitution of the United States.

For this reason appellant does not join in said motion to advance but submits to the court that said case should not be advanced at the present time.

ALEX. C. KING,
Solicitor General.

APRIL, 1919.

○

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

ALBERT S. BURLESON, POSTMASTER GENERAL, appellant,

v.

THOMAS E. DEMPCY, ET AL., MEMBERS OF the Public Utilities Commission of Illinois, and Edward J. Brundage, Attorney General of the State of Illinois, appellees.

No. 1006.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS.

MOTION TO CONTINUE SUPERSEDEAS.

Comes now Albert S. Burleson, Postmaster General, appellant in the above-stated case, by Alexander C. King, Solicitor General, and Henry S. Robbins, representing him as attorneys in this court, and respectfully shows:

That the above-stated case is a bill in equity filed by the appellant against the Members of the Public Utilities Commission of Illinois and Edward J. Brundage, Attorney General of said State, to enjoin them from interfering with the carrying out of the

order of the Postmaster General in charge of certain telegraph systems and lines in the State of Illinois, possession and control of which had been taken by the President of the United States as provided in Joint Resolution of Congress dated July 16, 1918, empowering him so to do, and the operation of which said lines had been by the said President of the United States committed to the said appellant Burleson, as Postmaster General, by proclamation of said President bearing date July 22, 1918. Said systems were in the possession of said President, and said Postmaster General as his representative, and were being operated by him, using for such purpose the respective corporations, their officers, agents and employees, the owners of said telegraph systems, who were operating the same entirely as the agents and representatives of said President and said Postmaster General.

Said appellant by an order, on or about March 29, 1919, had directed that a schedule of rates and charges for business transacted over said telegraph systems should be put into effect on April 1, 1919, and the same had been so put into effect, and that the Public Utilities Commission of the State of Illinois claimed that appellant was without authority to put into effect said schedule of rates and charges for telegraph service, and that the said rates and charges of said telegraph companies could not be changed or altered without the consent and approval of said Public Utilities Commission.

Appellant was informed and believed, and upon such information and belief charged the fact to be that the said Public Utilities Commission, undertaking to proceed under the laws of the State of Illinois, would endeavor to interfere with the charging of said rates for telegraph service in the operation of said telegraph systems, would endeavor to subject the persons and corporations operating said system on behalf and as agents of appellant to penalties; and that not only an interference with business but a multiplicity of suits would be thus produced; and that in order to avoid the same and prevent the loss resulting therefrom, appellant on April 7, 1919, filed a bill in the District Court of the United States for the Northern District of Illinois against the Members of said Public Utilities Commission to enjoin any interference with appellant, his agents, representatives, and servants in the conduct of said telegraph business in the charging of said rates.

Application for temporary injunction upon the said bill was made before three judges, and the temporary injunction was granted as prayed for. Thereafter, on April 21, final hearing was had in said cause upon the pleadings and stipulations of counsel as to the facts before the Honorable Kenesaw M. Landis, United States District Judge for the Northern District of Illinois, and on April 26, 1919, a final decree was rendered in said cause, dissolving the temporary injunction, finally denying the injunction prayed for by appellant, and dismissing his bill for want of equity; and upon the answer of said defendants in

said case in the nature of a cross bill, granting an affirmative injunction against your appellant from charging or collecting any rates for intrastate messages in Illinois other than those specified in the schedule theretofore filed by the corporations with the Public Utilities Commission of Illinois, and from charging the rates authorized and ordered by your appellant until the same should be approved by said Public Utilities Commission.

Appellant shows that an appeal was taken to this court. In allowing the petition for appeal, the said Judge granted a supersedeas to the said decree dissolving the temporary injunction and enjoining your appellant as above stated, to continue for the space of ten days from April 26, 1919, "for the purpose of enabling the plaintiff to apply to the Supreme Court of the United States for a further continuance of said injunction pending said appeal."

Appellant shows if compelled to reestablish the schedule of rates formerly charged by the corporations owning said telegraph systems pending the hearing and determination of the appeal in this case, that in the event the said decree of the District Court should be reversed it would be practically impossible to collect from the patrons of said telegraph systems any increase in charges made over the former telegraph rates, and that the same would in large part be a total loss. That in the event the said decree should be affirmed it would be a simple matter for appellant to refund any overcharges which might be thus made;

and that the same could be controlled in the final disposition of said case. That the increase in rates made by the schedule prescribed by appellant was due to the fact that the revenues were needed in the operation of said telegraph systems by the United States under the said Joint Resolution; and that the loss of any of said revenues would create a deficit which would have to be paid by the United States, and for the reasons hereinabove the loss would be one which could not be repaired.

For the foregoing reasons appellant prays that the supersedeas of said final decree be and the temporary injunction awarded continued by this Honorable Court pending the hearing and disposition of this cause on appeal.

ALEX. C. KING,
Solicitor General.

HENRY S. ROBBINS,
MORRIS M. TOWNLEY,
Solicitors for Appellant.

MAY, 1919.



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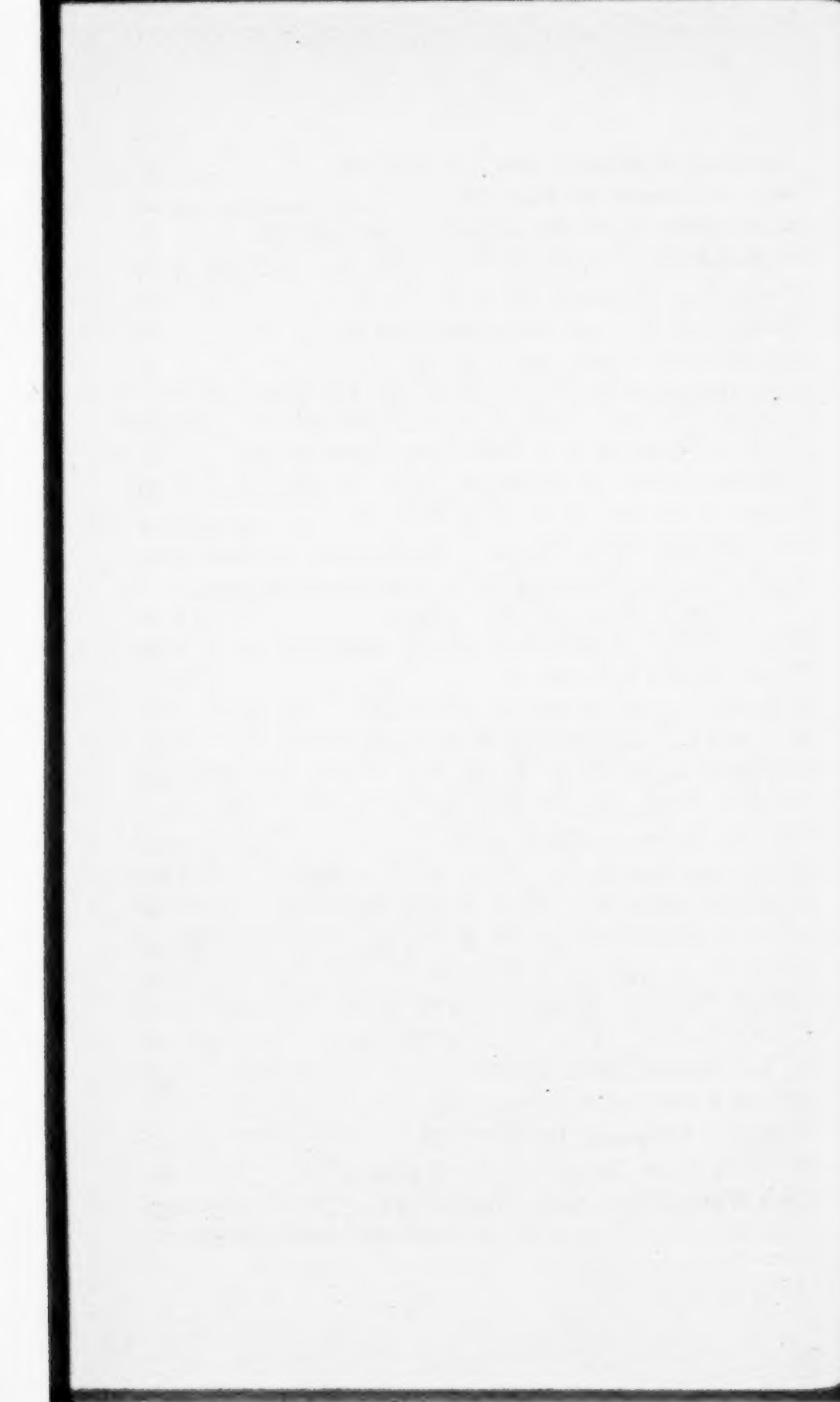
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IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1918.

No. 1006.

ALBERT S. BURLESON, Postmaster General,
Appellant,

vs.

THOMAS E. DEMPCY, et al., Members of
the Public Utilities Commission of Illinois,
and EDWARD J. BRUNDAGE, Attorney
General of the State of Illinois,
Appellees.

} Appeal from United
States District
Court, Northern
District of Illi-
nois.

APPELLANT'S BRIEF.

STATEMENT.

This is an appeal by the Postmaster General from a final decree granting to the Public Utilities Commission of Illinois a permanent injunction restraining the Postmaster General from charging for intrastate telegrams in Illinois increased rates, which by his order had become operative on the first day of April last.

The President, on the 22d day of July, 1918, by proclamation (Rec., 3), assumed the "supervision, possession, control and operation" of the telegraph systems of the country, and delegated the

control and operation of them to the Postmaster General pursuant to a joint resolution adopted by Congress on July 16, 1918, in the words and figures following:

“RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the President during the continuance of the present war is authorized and empowered, whenever he shall deem it necessary for the national security or defense, to supervise or to *take possession and assume control* of any telegraph, telephone, marine cable, or radio system or systems, or any part thereof, and to *operate the same* in such manner as may be needful or desirable for the duration of the war, which supervision, possession, control, or operation shall not extend beyond the date of the proclamation by the President of the exchange of ratifications of the treaty of peace: Provided, That just compensation shall be made for such supervision, possession, control, or operation, to be determined by the President; and if the amount thereof, so determined by the President, is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code: *Provided further, That nothing in this Act shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by such system or systems.*”

The Public Utilities Commission of Illinois was created by statute (the material sections of which are printed in the appendix to this brief), and was thereby given general supervision of all "public utilities" of the state, with power to prescribe the forms of the accounts to be kept by them, and the standard of service to be furnished (Sec. 54), to condemn their existing practices and equipment and require new equipment (Sec. 54), and is authorized to institute suit in a Circuit Court of the state or other court of concurrent jurisdiction "for the purpose of having such violations or threatened violations (of the statute) stopped or prevented either by mandamus or injunction." (Sec. 75.) This statute also requires every "public utility" within the state to "obey and comply with each and every . . . order . . . or regulation . . . prescribed by the Commission . . . in . . . any . . . matter in any way relating to or affecting its business as a public utility" (Sec. 9); to furnish to the Commission in the form prescribed by it annual reports, and monthly reports when required; and no such public utility may make any change in rates or in any practice until 30 days' notice to the Commission, and no increase in rates "under any circumstances whatever except upon a showing before the Commission and a finding by the Commission that such increase is justified," and upon such hearing the Commission is required to establish what the rates should be. (Secs. 19, 36 and 41.) Nor may any public utility install any new plant or equipment without a certificate of the Commission. (Sec. 55.)

This Public Utilities Commission had applied to a state court at Chicago and secured an injunction

restraining the Postmaster General from charging, as respects intrastate service in Illinois, certain increased *telephone* rates (Rec., ...), and was threatening similar action respecting the increased rates for intrastate telegrams, when the Postmaster General applied to the United States District Court at Chicago for an injunction, alleging as one of the grounds therefor, that this state statute, if construed (as claimed by these state officials) to apply to the Postmaster General in the operation of these telegraph systems, violated those provisions of the Constitution of the United States, which confer on Congress and the President power to conduct war, and confer on the United States immunity from suit.

On April 14, 1919, an application for a temporary injunction was heard by three judges under Section 266 of the Judicial Code, and they granted the Postmaster General a temporary injunction restraining the Public Utilities Commission from interfering with them.

Thereafter Judge Landis set the case for final hearing on April 21, 1919. The Public Utilities Commission filed its answer, which was partly in the nature of a cross-bill. (Rec., 22.) A motion by the Postmaster General to strike out those sections of the answer constituting the cross-bill was overruled, and an answer was filed by the Postmaster General to the cross-bill.

A stipulation of facts was then entered into, and upon the final hearing Judge Landis entered a decree (Rec., 34) dismissing the Postmaster General's bill for want of equity, and granting a permanent injunction enjoining the Postmaster General and his

agents from demanding or collecting for the transmission of messages by telegraph between points lying wholly within the State of Illinois the increased telegraph rates prescribed by the Postmaster General "until said increased rates and charges shall be approved by the Public Utilities Commission of Illinois."

As the case involves the constitutionality of a state statute and the construction or application of the Federal Constitution, this appeal was taken by the Postmaster General directly to this court, and in the order allowing it the District Court directed that the temporary injunction remain in force for 10 days to enable the Postmaster General to apply to this court for a further continuance thereof pending this appeal.

This record presents for decision the following two questions:

(1) Does the immunity from suit existing in favor of the United States protect the Postmaster General from suit by the State Public Utilities Commission of Illinois?

(2) Does the proviso of the foregoing joint resolution of Congress reserve to the several states the right to prescribe what telegraph rates shall be collected by the Postmaster General upon intrastate messages?

ARGUMENT.

I.

The Postmaster General is here Immune from Suit.

The bill sought to enjoin the Public Utilities Commission from interfering with the Postmaster General's continuing in force in Illinois the intrastate rates fixed by him upon the ground, among others, that such suits, would be in effect suits against the United States. The cross-bill against the Postmaster General, constituted a suit of the very character which the bill sought to enjoin. The question whether such a suit is, in effect, against the United States is thus doubly presented, by the dismissal of the bill; and by the decree against the Postmaster General upon the cross-bill.

In *Carr v. United States*, 98 U. S. 437, this court said:

“We consider it to be a fundamental principle that the Government cannot be sued except by its own consent; and certainly no State can pass a law which would have any validity for making the Government suable in its courts.”

Does the immunity from suit enjoyed by the United States extend to the Postmaster General in the case at bar?

Appellees contend, and the District Court has decided, that the Postmaster General in the operation of these telegraph lines as the representative of the

President, is a "public utility" within the Illinois Statute, and that this Public Utility Commission—under the power conferred on it to compel by suit any public utility in Illinois to comply with the provisions of that statute—may maintain a suit to enjoin the Postmaster General as respects intrastate telegraph service in Illinois.

The Joint Resolution of Congress authorized the President to take possession, assume control and operate any telegraph system "in such manner as may be needful or desirable for the duration of the war." The President, having the inherent power to do so, delegated that power and control to the Postmaster General. Hence, the fixing of these rates by the Postmaster General was in effect the fixing of the rates by the President, as has been frequently decided by this court.

Wilcox v. McConnel, 13 Pet. 513.

United States v. Eliason, 16 Pet. 300.

Confiscation Cases, 20 Wall. 109.

Wolsey v. Chapman, 101 U. S. 770.

Runkle v. United States, 122 U. S. 557.

This is especially true under this resolution because—as we shall presently see—the control of these telegraph systems was one of the resources furnished the President with which to win the war, and he has control of them under his power as Commander-in-Chief in time of war.

Thus the question is, whether the President is immune from suit when in the possession and operation of a telegraph system which has been intrusted to him as one of the resources with which to conduct

a war. Is a suit, which seeks to interfere with his prescribing of intrastate rates, a suit against the United States within the immunity from suit which the United States enjoys?

If so, the Illinois statute authorizing this Public Utility Commission to sue violates the Constitution of the United States; for immunity from suit is one of the attributes of sovereignty, which (like the right to enact a penal code covering crimes against the United States) is by the Constitution conferred upon the United States, although not expressly mentioned therein. In other words, immunity from suit is one of the resulting powers arising out of the Constitution considered in its entirety.

Legal Tender Cases, 12 Wall. 534.

While the United States may consent to be sued and thus waive its immunity, this waiver can come only from Congress. No official of the United States can waive it.

Carr v. United States, 98 U. S. 437.

Stanley v. Schwalby, 162 U. S. 255, 269.

United States v. Lee, 106 U. S. 196, 222.

In *Stanley v. Schwalby*, *supra*, this court said:

"It is a fundamental principle of public law, affirmed by a long series of decisions of this court, and clearly recognized in its former opinion in this case, that no suit can be maintained against the United States, or against their property, in any court, without express authority of Congress. 147 U. S. 512. See also *Belknap v. Schild*, 161 U. S. 10. The United States, by various acts of Congress, have consented to be sued in their own courts in certain classes of cases; but they have never consented to be sued

in the courts of a State in any case. Neither the Secretary of War nor the Attorney General, nor any subordinate of either, has been authorized to waive the exemption of the United States from judicial process, or to submit the United States, or their property, to the jurisdiction of the court in a suit brought against their officers."

Hence the Postmaster General, by filing a bill in the District Court, did not waive immunity from suit, because (1) the Postmaster General could not waive immunity, and (2) immunity is not waived in a suit brought (as the Postmaster General's bill expressly was) to assert and secure immunity from suits by these state officials.

Nor is the proviso of the Joint Resolution of Congress a waiver of this immunity. It provides that

"Nothing in this Act shall be construed * * * to impair or affect * * * the lawful police regulations of the several States."

All that this proviso does is to direct the President in the operation of these telegraph systems to respect the *lawful* police regulations of the States, and—if appellees are right in their contention—to charge for intrastate service only such rates as are approved by State authorities. It is one thing to prescribe a rule of conduct for an official of the United States to comply with (especially the President while engaged in conducting a war) and quite another, and a much more far-reaching one, to waive the immunity of the United States from suit.

It is inconceivable that Congress by this proviso intended to provide that the President, or his representative, should be subject to suit by forty-four different State public utilities commissions, and

should also be subject to suit by innumerable municipalities in States where (as in Texas) the rate making power is conferred on municipalities.

In *Public Service Commission v. New England Telephone & Telegraph Co.*, recently decided by the Supreme Court of Massachusetts, it was expressly held that such was not the effect of the proviso in question. Speaking by Chief Justice Rugg, the court said:

"That proviso does not seem to us as reasonably susceptible of being stretched by implication to include a consent to be impleaded in the state courts in such a proceeding as this.

Such consent is not commonly inferable from such a remote and equivocal phrase having direct and adequate reference to another matter."

We come now directly to the question whether a suit, which seeks to control the Postmaster General in the matter of intrastate telegraph charges, is, in legal effect, a suit against the United States. In answering this question, two distinct classes of cases are to be considered and reconciled. The first class of cases is where State or Federal officers are sued in a representative capacity, so that the decree, while nominally against the officers, in effect operates against the Government, either compelling the Government to perform its obligations, or directly adjudicating its rights and liabilities. In this class of cases, although the Government officials alone are the nominal defendants, it is held that the suit is in effect against the State, or the United States. The following cases illustrate the application of this principle:

- Belknap v. Schild*, 161 U. S. 18.
Louisiana v. Jumel, 107 U. S. 711.
Cunningham v. R. R. Co., 109 U. S. 446.
Hagood v. Southern, 117 U. S. 52.
Oregon v. Hitchcock, 202 U. S. 60.
Naganab v. Hitchcock, 202 U. S. 473.
International Co. v. Bruce, 194 U. S. 601.
New Mexico v. Lane, 243 U. S. 52.
Louisiana v. McAdoo, 234 U. S. 627.
Goldberg v. Daniels, 231 U. S. 218.
Louisiana v. Garfield, 211 U. S. 70.
Wells v. Roper, 246 U. S. 335.
Re Ayres, 123 U. S. 443.
Antoni v. Greenhow, 107 U. S. 769.

The second class of cases is where suits are brought against defendants who, claiming to act as officers of a State, or of the United States, but without actual legal authority, are about to commit acts of wrong against the plaintiff, which, if committed, would render such officials personally liable to the plaintiff for such wrongful conduct. In this class of cases, the offending officials are suable in their individual capacity, and decrees rendered in such suits bind the defendants solely in their individual capacity. In this class of cases, the action of the court does not affect the official conduct of the defendants, nor does it adjudicate any of the rights or liabilities of the Government, nor is the decree *res judicata* against the Government. Cases of this character, among others, are:

- Philadelphia Co. v. Stimson*, 223 U. S. 605.
Lane v. Watts, 234 U. S. 525.
Garfield v. Goldsby, 211 U. S. 249.

Within the first of the above classes fall all cases, where the United States, through one of its officials, is in *possession and control* of property, and a decree would interfere therewith, or impair the government's use of such property. Thus in

Belknap v. Schild, 161 U. S. 10, 18, 24, a patentee filed a bill against a Commodore of the United States Navy, and others, in possession of a caisson gate, in the construction of which the plaintiff claimed his patent had been infringed, and sought an injunction against further infringement, but this court, in dismissing the bill, said:

"But no injunction can be issued against officers of a State, to restrain or control the use of property already in the possession of the State, or money in its treasury when the suit is commenced; or to compel the State to perform its obligations; or where the State has otherwise such an interest in the object of the suit as to be a necessary party. * * *

In the present case, the caisson gate was a part of the dry dock in a navy yard of the United States, was constructed and put in place by the United States, and was the property of the United States, and held and used by the United States for the public benefit. If the gate was made in infringement of the plaintiff's patent, that did not prevent the title in the gate from vesting in the United States. The United States, then, had both the title and the possession of the property. The United States could not hold or use it, except through officers and agents. Although this suit was not brought against the United States by name, but against their officers and agents only, nevertheless, so far as the bill prayed for an injunction, and for the destruction of the gate in question, the defendants had no individual interest in the con-

troversy; the entire interest adverse to the plaintiff was the interest of the United States in property of which the United States had both the title and the possession; the United States were the only real party, against whom alone in fact the relief was asked, and against whom the decree would effectively operate; the plaintiff sought to control the defendants in their official capacity, and in the exercise of their official functions, as representatives and agents of the United States, and thereby to defeat the use by the United States of property owned and used by the United States for the common defense and general welfare; and therefore the United States were an indispensable party to enable the court, according to the rules which govern its procedure, to grant the relief sought; and the suit could not be maintained without violating the principles affirmed in the long series of decisions of this court, above cited."

International Co. v. Bruce, 194 U. S. 601, 606:

Where the owner of a patent for improvements in stamp cancelling and postmarking machines sought to enjoin a postmaster from using in the service of the United States machines said to infringe the patent, and this court, dismissed the suit, reaffirmed the preceding case, and said:

"In the case at bar the United States is not the owner of the machines, it is true, but it is a lessee in possession, for a term which has not expired. It has a property, a right *in rem*, in the machines, which, though less extensive than absolute ownership, has the same incident of a right to use them while it lasts. This right can not be interfered with behind its back, and, as it cannot be made a party, this suit, like that of *Belknap v. Schild*, must fail. The answer to the question certified must be no."

Goldberg v. Daniels, 231 U. S. 218:

A suit against the Secretary of the Navy to compel him to deliver to plaintiff an old cruiser on the sale of which plaintiff was the highest bidder, and this court, in sustaining a dismissal, said:

"The United States is the owner in possession of the vessel. It cannot be interfered with behind its back, and, as it cannot be made a party, this suit must fail."

Louisiana v. Garfield, 211 U. S. 70, 77:

A bill brought by the State of Louisiana against the Secretary of the Interior, claiming certain swamp lands and seeking to enjoin the Secretary of the Interior from making a disposition of them. This court sustained a demurrer on the ground that the suit was really one against the United States, saying:

"It raises questions of law and of fact upon which the United States would have to be heard.
* * * The United States might, and undoubtedly would, deny the fact of such possession, and that fact cannot be tried behind its back. It follows that the United States is a necessary party and that we have no jurisdiction of this suit."

Cunningham v. Macon R. R., 109 U. S. 446:

Where the State of Georgia endorsed bonds of the railroad and subsequently acquired title and possession thereof under a sale on foreclosure. Holders of other mortgage bonds filed a bill against the governor of the State and certain agents of the State connected with the railroad. There, the State was in the possession and operation of the railroad, and the case was therefore identical with the case at

bar. This court, in directing a dismissal of the suit, said:

"In the case now under consideration the State of Georgia is an indispensable party. It is, in fact, the only proper defendant in the case. No one sued has any personal interest in the matter or any official authority to grant the relief asked. * * * The State is in the actual possession of the property, and the court can deliver no possession to the purchaser. The entire interest adverse to plaintiff in this suit is the interest of the State of Georgia in the property, of which she has both the title and possession."

These cases rest upon the principle that in equity at least, no suit will lie for a decree changing the ownership, possession, use of, or revenue from, property, when the real party in interest is not a party to the suit. The particular controversy is withdrawn from the jurisdiction of the court, because the court cannot get jurisdiction of the person of the real defendant, namely, the United States. In such a case, jurisdiction of the United States cannot be acquired by making one of its agents a party any more than jurisdiction of an individual owner of property can be acquired by making his agent the sole party to the suit. Not being able to acquire jurisdiction of the person, the court is without jurisdiction to decide or enter any judgment or decree. This is what is meant by immunity from suit. Hence this immunity exists, regardless of whether the court may think that the United States is right or wrong in its construction of the law. It is the entire withdrawal from the court of the right to decide a controversy to which the Government is a necessary party. It withdraws from this court in the present

case the right to decide, whether the construction put by the Postmaster General upon this proviso is the correct one or not.

The case at bar falls clearly within the principle established by the foregoing cases. The United States, through its Postmaster General, is in the actual possession of these telegraph lines and is actually operating them, and actually prescribing and enforcing all operating rules and regulations. Congress provided the President with no appropriation, thus clearly indicating its purpose to have the operation of these telegraph systems self-supporting. Thus, the question of the rates to be charged—no less than the wages to be paid—is one of the most important questions of operation. All of the revenues received from operations belong to the United States. All expenses incident to operation must be paid by the United States. If the operation results in a profit, that belongs to the United States, and if not profitable, the loss is that of the United States. The decree of the District Court in the case at bar substantially lessens the revenue derived by the United States from operation. It compels the United States to furnish service at a lower rate to be fixed by the State of Illinois. Thus the decree of the lower court affects and adjudicates the rights of the United States, and only the rights of the United States. While in form the decree merely enjoins the Postmaster General from charging certain rates, *in effect the decree operates as a mandatory injunction to compel the United States to furnish telegraph service at rates approved by the Public Utilities Commission of Illinois.* Such inevitably is its practical effect where, as here, the Postmaster General is operating

an industry of a *quasi* public character. It thus becomes obvious that the present decree binds the Postmaster General strictly in his official capacity, and not merely in his individual capacity. The decree effectively adjudicates the rights and liabilities of the United States with respect to the operation of certain telegraph lines which are now under the control and operation of the United States within the State of Illinois. This demonstrates that any suit which seeks to control the Postmaster General in the matter of intrastate charges is, in effect, a suit against the United States.

That such suits are in effect against the United States has been held in recent decisions of the Supreme Courts of Massachusetts, Oklahoma, Louisiana and Wisconsin. The opinion of the Supreme Court of Massachusetts is incorporated in the record of a case argued with this case. Copies of the opinions of the Supreme Courts of Oklahoma, Louisiana and Wisconsin are filed with the court.

II.

The proviso to the joint resolution did not reserve to the States the right to prescribe intrastate rates.

The language of the proviso is as follows:

“That nothing in this Act shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by such system or systems.”

It seems fair to presume that had Congress intended to reserve to the States the power to fix the intrastate rates to be charged by the President, the Act would have so provided in unambiguous language. Congress, however, did not say that the power should be reserved to the States to prescribe intrastate rates. The proviso merely purports to preserve “the lawful police regulations of the several States.” The contention of the appellees that this proviso reserves to the states the right to prescribe intrastate rates is untenable for the following reasons:

1. If so construed, the act of Congress would be in violation of the Constitution of the United States. The question presented has reference to the nature and extent of the war power conferred by the Constitution upon the President.

The Constitution vests in the President “the executive power of the United States. This confers

upon the President all power which is executive, as distinguished from power which is legislative or judicial. In addition to this, the Constitution makes the President the commander-in-chief of the Army and Navy of the United States. As the commander-in-chief of the Army and Navy, and as the seat of all executive power, the President is vested *by the Constitution* with exceedingly broad powers relative to the prosecution of war. Congress, it is true, possesses the constitutional power to "*declare war*," but obviously, the mere *declaration* of war, and its *prosecution* to a successful outcome, are radically different acts. The phraseology of the Constitution in this respect is significant in the light of its history. The Articles of Confederation provided that:

"The United States in Congress assembled shall also have the sole and exclusive right and power of * * * making rules for the government and regulation of the said land and naval forces and *directing their operations*."

In the earlier proposals and the first draft of the Constitution, Congress was given power to "make war." In Hamilton's proposal for a Constitution, it was provided "the Senate to have the sole power of declaring war," and the executive "to have the direction of war when authorized or begun." (1 Farrand's Records of the Constitutional Convention, 292.) Another early suggestion was that the President was "to direct all military operations," to which it was proposed to add, "but none of the executives personally to command any military expedition." (2 Farrand's Records of the Constitutional Convention, 157, 244, 247.) It thus appears that the distinction

between the act of *declaring* war and the act of *making* or *prosecuting* a war once declared, was distinctly in the minds of the members of the Constitutional Convention. The final draft of the Constitution authorized Congress to *declare* war, and, in effect, charged the President with its *prosecution*.

The power to conduct a war is divisible into the power to provide the man power and other resources, and the power to direct their use. Thus the Constitution gives Congress only powers "to lay and collect taxes * * * to * * * provide for the common defence," "to raise and support armies," "to provide and maintain a Navy," "to make rules for the government and regulation of the land and naval forces," "to provide for calling forth the militia to execute the laws of the Union," "to provide for organizing, arming and disciplining the militia," and to pass all laws "necessary or proper" to enable the President to make war.

The above power "to make rules for the government and regulation of the land and naval forces" does not include the power to direct their operation for the reason that this latter power, although contained in the Articles of Confederation (as quoted above) was omitted from the Constitution.

Consistently with these powers, which are conferred upon Congress, the President is made Commander-in-Chief of the Army and Navy, and is vested with all power of an executive nature. Thus Congress is given the power to provide the resources for the conduct of a war, while the President is given power to direct the use of such resources.

The power to prosecute war, thus given to the President, does not mean merely using the man power of the nation, but includes the use of every resource, material as well as human, which is deemed necessary to win the war.

The war powers conferred by the Constitution upon Congress are express and specific. On the other hand, the war power which is conferred by the Constitution upon the President is in the most general language, thus giving evidence of the purpose of the Constitution to confer on the President all war powers not specifically granted to Congress. Certainly the power to prosecute a war, in so far as such prosecution is executive in character, belongs to the President under the Constitution, and neither Congress nor the President could surrender that power to the governors or other agencies of the several states. Certainly Congress could not have authorized the governors of the several states to designate the precise localities to which the soldiers from that state should be sent, and what could not be done respecting man power may not be done respecting the other resources for winning the war.

By the Joint Resolution in question, Congress authorized the President to take possession and assume control of the telegraph lines, and to operate the same for the duration of the war. The power was to be exercised whenever the President should deem it necessary for the national security or defense. The purpose and effect of this Joint Resolution was to provide the President with certain resources for the successful prosecution of the war. This was clearly a legislative act and properly pertained to Congress. Having provided the President with

these particular resources, the control and operation of the lines belong to the President, not merely under the terms of the Joint Resolution, but by reason of the fact that such control and operation involve the exercise of the power to conduct the war. Hence, the power to control and operate the telegraph lines, given into the possession of the President by the Act of Congress, belong to the President *under the Constitution*, and not merely under the Act of Congress. It follows that his control and operation cannot be made subordinate to the will of any State.

2. We shall now attempt to point out that Congress made no attempt to confer such a power on the States. This brings us to consider the language of the proviso. The proviso says, in effect, that nothing in the act shall be construed to impair or affect *the lawful police regulations of the several States*. It is contended by the other side that the intent of this proviso was to reserve to the States the power to enact any legislation with respect to the telegraph lines which might be justified by the *police power* which is reserved to the States under the Constitution. The term "police power" has two distinct meanings. In *Sligh v. Kirkwood*, 237 U. S. 59, this court said that

"The police power, in its broadest sense, includes all legislation and almost every function of civil government."

On the other hand, it is equally clear that the expression is properly used in a narrower sense, as referring to measures for the protection of the lives, safety, health and morals of the community. This

narrower meaning has been said by this court to be "the ordinary accepted sense" of the expression. (*Manigault v. Springs*, 199 U. S. 473.) The correctness of the narrower definition has frequently been recognized by this court, as well as by other authorities.

Manigault v. Springs, 199 U. S. 473, 481.

Freund on Police Powers, §10.

Hawthorne v. People, 109 Ill. 303, 311.

Railroad Co. v. Willemburg, 117 Ill. 203, 208.

In its broader sense, the expression "police powers" undoubtedly includes the rate-making power. In its narrower sense, the rate-making power is not included. This fact, as well as the recognition of the fact that the expression has two distinct meanings, will appear from numerous decisions of this and other courts. For example, this court has frequently held that the police power of a State (using the expression in its narrow sense) cannot be bargained away.

Stone v. Mississippi, 101 U. S. 814-817.

Northern Pacific Ry. v. Duluth, 208 U. S. 583, 597.

Other cases in this court held that the rate-making power may be bargained away.

Home Telephone Co. v. Los Angeles, 211 U. S. 273.

Detroit Rate Case, 242 U. S. 238.

Undoubtedly, the rate-making power is a part of the police power in the broader sense. In the narrower sense, however, the rate-making power is not a part of the police power; otherwise, the

Detroit and *Los Angeles Rate Cases* would be grossly inconsistent with *Stone v. Mississippi*, *supra*. In order to reconcile the two cases last cited with the two cases previously cited, it is necessary not only to recognize that the expression in question is used in two distinct senses, but that the rate-making power, although a part of the police power in its broader sense, is no part of the police power in its narrower sense.

Again, while States admittedly have the power to fix public utility rates, it is elementary that, under the guise of rate regulations, the States may not confiscate the property of public utility corporations. Decisions on this point would be superfluous. Consistently with this principle, however, property may be confiscated by the States under the police power in its narrower sense.

Cooley's Constitutional Limitations, 6th Ed., 716, 739, 741.

Crane v. Campbell, 245 U. S. 304.

Illustrations of the latter principle will readily occur to the court. The destruction of property to prevent the spread of fire or contagious diseases, and the prohibition of the manufacture of intoxicating liquors, with the practical result of confiscating manufacturing establishments erected for that purpose, are perhaps the most obvious examples. These judicial authorities can only be reconciled by recognizing the fact that the expression is used in two distinct senses, and that the rate-making power, while constituting a branch of the police power in the broader sense, is no part whatever of the police power in the narrower sense.

The same principle is illustrated by the many cases which hold that municipalities, although vested with police powers in the narrow sense, are not authorized to fix public utility rates, unless specifically authorized by the legislature.

Trust Co. v. Atlanta, 83 Fed. 39.

Mills v. Chicago, 127 Fed. 731-734.

York Water Co. v. York, 250 Pa. 115.

St. Louis v. Telephone Co., 96 Mo. 623.

Minneapolis Co. v. Minneapolis, 194 Fed. 215.

City of Kalamazoo v. Judge, 200 Mich. 146.

Cumberland Telephone Co. v. Memphis, 200 Fed. 657 .

Iowa Telephone Co. v. Keokuk, 226 Fed. 82.

In the cases above cited, municipalities were granted the authority to pass police ordinances, either in express terms or by words of general description. Under this authority such municipalities attempted to fix rates for public utility corporations. It was held that in the absence of an express statute authorizing such municipalities to fix rates, the power did not exist.

The authorities referred to sufficiently disclose that the expression "police power" is correctly used in the two distinct senses referred to. Assuming this to be true, we may now approach the interpretation of the proviso. In the first place, it is to be noted that the proviso does not preserve the *police powers* of the states (as it expressly does preserve the *taxing powers* of the states), but merely seeks to preserve unimpaired "the lawful *police regulations* of the several states." While the expression "*police*

powers" is frequently and properly used in the broad sense heretofore defined, & "*police regulation*" is generally understood as a measure adopted under the police power in its narrower sense; that is, a measure for the protection of the lives, safety, health or morals of the community. (*New Orleans Gas Co. v. Light Co.*, 115 U. S. 650, 666.) Thus, laws providing for the establishment of schools, universities, libraries, parks, cemeteries or charities, laws for the descent of property, homestead laws, laws providing for guardianships and receiverships, and laws providing for the construction and maintenance of public roads, are all enacted under the police powers of the state, in its broadest sense. It would seem singular, however, to hear such laws referred to as police regulations. No one would classify as a police regulation, a law providing for a public library or establishing a state university. Obviously this latter expression is better adapted to describe measures enacted under the police power in its narrower sense. In this sense, as we have already seen, a law fixing public utility rates is not a police regulation.

Disregarding for the moment the technical language, and looking more broadly to the spirit and policy of the act in question, the intent of Congress becomes more manifest. The act was passed, not pursuant to the interstate commerce clause of the constitution, but under the war powers of Congress. Even under its interstate commerce powers, Congress might have provided that interstate telegraph rates should be fixed by federal action. (*Minnesota Rate Cases*, 230 U. S. 352.) So long, however, as federal control of rates was predicated upon the in-

terstate commerce powers of Congress, there was reason to hold (as was held in the *Minnesota Rate Cases*), that the inaction of Congress left the states free, for the time being, to establish intrastate rates. Here, however, Congress has acted, not by virtue of its interstate commerce powers, but by virtue of its war powers. While interstate commerce laws are obviously enacted in recognition of state boundaries, laws passed by Congress under its war powers may be assumed to have been enacted in utter disregard of state boundaries. Under the joint resolution in question, the power of the federal government to exercise control of the telegraph lines has no more relationship to state boundary lines than has the power of the federal government to operate the mails of the United States. And where telegraph lines are operated by the federal government under the war power, there is no more reason for states to prescribe intrastate telegraph rates than there is for states to prescribe intrastate mail rates.

3. The interpretation given by the other side to the proviso in question would substantially tend to defeat the purpose of Congress in the enactment of the Joint Resolution. The purpose was undoubtedly to promote the operating efficiency of the telephone and telegraph lines, to the end that such lines might be more serviceable to the government in its task of prosecuting and winning the war. This purpose was to be effected by the consolidation of several separate organizations into one system, which was to be controlled and operated by the federal government. This unity of control and operation is obviously inconsistent with the idea of having the unified

system subjected to the rate-making control of forty-eight separate states, not to mention innumerable municipalities, which are vested by law with rate-making powers. In this connection it is to be borne in mind that at the time the Joint Resolution in question was passed, the United States, engaged in the gigantic task of prosecuting the war, was in need, not only of telephone and telegraph service, but was perhaps more urgently in need of revenue for war purposes. Unprecedented taxes were being levied, and unprecedented bond issues were being authorized. Certainly, Congress cannot have intended to handicap the government by providing that the telephone and telegraph lines should be taken over and operated by the government at a loss. That Congress had no such intention is further manifest from the fact that it made no appropriation with which to pay any such loss. What Congress obviously intended was that the president should pay operating expenses from operating revenue. Congress must have known that operating expenses were almost daily increasing. It must have been obvious to Congress that increased rates might become necessary in order to meet increased operating expenses. How long the war would last, and how much operating expenses might increase during the period of the war, Congress had no means of knowing. It must be assumed that Congress intended to give to the president the power to increase rates commensurate with the increase of operating expenses. It must have been obvious to Congress that in order to meet increased operating expenses, intrastate rates, no less than interstate rates, would have to be increased. In order to make these necessary increases in rates,

did Congress intend to compel the president to petition the various states, and to accept their final judgment as to whether the requested rate increases were necessary? In the many states where municipalities have been delegated with power to fix rates, did Congress intend that the president should be compelled to apply to innumerable municipalities in order to obtain necessary rate increases? Irrespective of any desire on the part of the federal government to increase rates, did Congress intend that federal control should be handicapped by the rate-making power of forty-eight states, not to mention innumerable municipalities to which the rate-making power has been delegated? To answer these questions in the affirmative is to impute to Congress an intent to destroy the very unity of control which Congress sought to create. To have left the rate-making power in the various states and municipalities might have resulted in almost inextricable confusion. Such power, if exercised by the various states and municipalities, would have been subject to the constitutional principle that such rates must not be confiscatory. What rates would be deemed confiscatory as applied to the United States as operating lessee might present extremely difficult questions, both of law and fact. Congress certainly could not have intended that the president, in the midst of war, should be called upon to litigate with various states and municipalities concerning the confiscatory character of rates fixed by such states and municipalities. The loss of energy, and inefficiency of a system subjected to these difficulties is obvious to everyone, and must have been obvious to Congress. The purpose of the Joint Resolution was to increase

operating efficiency, and to unify control. The Act of Congress should be construed to effect this purpose.

4. Even assuming that the proviso uses the expression "police regulations" as equivalent to the police power in its broadest sense, the states are without power to establish intrastate rates. Even in its broadest sense, the police power of the states is subject to the limitation that laws passed pursuant thereto must not conflict with the paramount power of the federal government. To the extent that state police laws do so conflict, they are unlawful, although, except for such conflict, they would be entirely lawful. Hence, the proviso merely reserves to the states the power to enact *lawful* police regulations. What was intended by the word "lawful" in this context? Its significance, we think, will appear from the many decisions of this court relative to the validity of state police regulations which have been claimed to constitute unlawful interferences with the power of Congress to regulate interstate commerce. Where the validity of such police regulations has been called in question, this court has invariably held that in the absence of any regulation by Congress, a state police regulation which is local in its application, and which only indirectly and incidentally affects interstate commerce, will not be regarded as an interference with the power of Congress.

Savage v. Jones, 225 U. S. 525.

Examples are state quarantine and inspection laws; state laws requiring locomotive engineers to submit to examination and to procure licenses (*Smith v. Alabama*, 124 U. S. 465); requiring loco-

motive engineers to pass examinations for color blindness (*Nashville R. R. v. Alabama*, 128 U. S. 96); requiring cars to be heated (*N. Y., N. H., etc., R. R. v. New York*, 165 U. S. 628); requiring cars to be fumigated (*South Covington R. R. v. City*, 235 U. S. 537), and requiring the prompt delivery of telegraph messages (*W. U. T. Co. v. James*, 162 U. S. 650). Where Congress passes laws under the interstate commerce clause of the Constitution, it would be superfluous for such laws to expressly reserve to the states the power to enact lawful police regulations. This reservation is written into all such Acts of Congress by the decisions of this court. In the passage of the present act, which was an exercise of the war power (the limitations of which were little understood), Congress, doubtless out of an abundance of precaution, inserted the proviso in question reserving such power to the states. In any event it is obvious that the "lawful police regulations" sanctioned by the proviso are those which are primarily of a local character, and which only indirectly and incidentally affect the war power of Congress. The question, then, resolves itself to this: Is a state statute fixing intrastate telegraph rates, a regulation which only indirectly and incidentally affects the war power of Congress?

In the solution of this question, it becomes important to emphasize the distinction between the interstate commerce power and the war power. Under the interstate commerce clause of the constitution, the power of Congress to fix rates is limited in the first instance to interstate rates, and Congress has

no power to fix intrastate rates unless it becomes necessary in order to effectually maintain the control of Congress over interstate rates. (*Minnesota Rate Cases*, 230 U. S. 352.) On the other hand, when the United States takes possession of the telegraph lines under the war power, it has the constitutional power to fix intrastate rates equally with interstate rates. This is true to exactly the same extent that Congress has the power to fix intrastate mail rates as well as interstate mail rates.

We have, then, this situation: Congress has taken control of the telegraph lines and incident thereto has constitutional power to fix all rates—intrastate and interstate. The act under which control was taken, reserves to the states the power to enact *lawful* police regulations. And the question is whether a law fixing intrastate rates is a lawful police regulation, in other words, whether it materially affects the efficiency of this war power.

Now it is elementary that even where Congress has taken no steps to establish interstate rates, a state law fixing interstate rates is invalid as constituting a direct interference with the power of Congress to regulate interstate rates. This is elementary. The principle here established is that where the power to fix particular rates pertains to Congress, any state law which attempts to fix such rates is a direct interference with the power of Congress, and hence unlawful. This principle is applicable here. The federal government having taken control of the telegraph lines under the war power, and having the constitutional authority to fix all rates (interstate and intrastate), any state law which at-

tempts to fix such rates is a direct interference with the power of Congress. Such a state law (exactly as a state law which attempts to fix interstate rates) undertakes to fix rates the establishment of which constitutionally pertains to Congress. Such a law has more than an indirect and incidental effect upon the power of Congress. It constitutes a direct interference in a most vital and important particular. Hence, within the meaning of the proviso, such a law is not a *lawful* police regulation, but rather falls within that established category of regulations which have uniformly been held unlawful because directly interfering with the constitutional powers of Congress.

5. The meaning of the proviso which reserves to the states the power to enact lawful police regulations is completely clarified by the history of the proviso. On August 29, 1916, the President approved the Act of Congress authorizing the President to take possession and control of the railroads of the United States. On December 26, 1917, the President issued a proclamation taking possession, control and operation of the railroads. (S. Doc. No. 159.) The proclamation directed that railroad rates should remain as fixed by the Interstate Commerce Commission and the various state commissions, subject, however, to the "paramount authority" of the Director General. On January 1, 1918, the government control became effective. On March 21, 1918, Congress passed the "Railroad Act." Section 10 authorized the President, in cooperation with the Interstate Commerce Commission, to establish rates. Section 15 was as follows:

"Sec. 15. That nothing in this Act shall be

construed to amend, repeal, impair, or affect the existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transportation of troops, war materials, Government supplies, or the issue of stocks and bonds."

On July 16, 1918 (some four months later), Congress passed the Telephone and Telegraph Act. The proviso which was added to the Telephone and Telegraph Act was obviously taken from Section 15 of the Railroad Act. In both Acts Congress reserved to the states the power to enact "lawful police regulations." This expression must have been intended to have the identical meaning in both Acts. In the Railroad Act the power to enact lawful police regulations did not include the power to establish intrastate rates, because Section 10 of the Railroad Act expressly conferred that power upon the President.

It follows that the proviso to the Act in question, which reserved to the states the power to enact lawful police regulations, was not intended to confer the power to establish intrastate rates.

The decree of the lower court should be reversed.

Respectfully submitted,

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